

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

SYNGENTA CROP PROTECTION, LLC.)	Civil Action
)	No. 1:15CV274
Plaintiff,)
))
vs.	Greensboro, North Carolina
))
WILLOWOOD, LLC, WILLOWOOD	September 6, 2017
USA, LLC., WILLOWOOD)
AZOXYSTROBIN, LLC, and)
WILLOWOOD LIMITED,)
))
Defendants.)

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE CATHERINE C. EAGLES
UNITED STATES DISTRICT JUDGE

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P R O C E E D I N G S

(Proceedings commenced at 9:30 a.m.)

THE COURT: I think our last juror came in. Anything we need to take up before the jury comes into the courtroom?

MR. LEVINE: Just one quick housekeeping issue, Your Honor.

THE COURT: Yes.

MR. LEVINE: One exhibit was not moved into evidence yesterday, Exhibit 4B. So I move for the admission of Plaintiff's Exhibit 4B. Barry, it's the original.

THE COURT: The original patent?

MR. LEVINE: Yes.

THE COURT: Okay. It'll be admitted.

Anything else? Okay. We can bring the jury in.

(Jury panel is present.)

THE COURT: All right. Good morning. I see you people came prepared with sweaters today. If I ask the building people to turn the air down, then it gets hot, and I personally would rather be cold. You all are at least nodding with me, so we'll -- I think we are ready to continue.

We were still on direct examination with Mr. Heinze, correct?

MR. LEVINE: Correct.

THE COURT: All right. You may proceed, Mr. Levine.

BRIAN HEINZE,
PLAINTIFF'S WITNESS, PREVIOUSLY SWORN,
DIRECT EXAMINATION

BY MR. LEVINE

Q. Good morning, Mr. Heinze.

A. Good morning.

Q. When we stopped yesterday, we were talking about issues relating to the '138 patent, and in particular, whether Willowood directed or controlled Tai He, the manufacturer of Willowood's azoxy technical, so let's continue.

Please turn to Exhibit 26 -- Plaintiff's Exhibit 26 in your notebook.

MR. LEVINE: I move for admission of Plaintiff's Exhibit 26.

MR. NEUMAN: May I have a moment, Your Honor?

THE COURT: You may.

THE WITNESS: I have it up.

MR. NEUMAN: No objection.

THE COURT: It'll be admitted.

BY MR. LEVINE

Q. Mr. Heinze, Plaintiff's Exhibit 26 at the top is an e-mail from you to a number of people dated March 27th, 2015, correct?

A. Correct.

Q. And the people to whom you sent it were Andy King, who is your national sales manager, correct?

1 A. His title has since changed, but, yes, he's is still with
2 the organization.

3 Q. Okay. At the time, he was the national sales manager?

4 A. That is correct.

5 Q. And it was also sent to Mr. Joe Middione, who, at the
6 time, was the chief operating officer of Willowood USA?

7 A. That's correct.

8 Q. It was also sent to Vijay Mundhra, who was the managing
9 director of Willowood Limited, correct?

10 A. Correct.

11 Q. And this e-mail was sent, as we said, March 27, 2015. Do
12 you recall that that's the date that the lawsuit that we're
13 here about today was actually filed with the court?

14 A. I do.

15 Q. Let's look at what you were telling Mr. King,
16 Mr. Middione, and Mr. Mundhra. You said, did you not, that the
17 first thing we need to confirm is that our manufacturer is
18 making the product the way we have instructed them to do so.

19 That's what you stated, correct?

20 A. In this e-mail, yes.

21 Q. Okay. Thank you, David.

22 Mr. Heinze, let's talk now about some of the issues
23 relating to the DABCO patent. In January 2016, Willowood
24 utilized a company by the name of JDM, John David Mary,
25 Research, to test samples of azoxy technical from Tai He,

1 correct?

2 A. Best of my knowledge, Tai He and CAC.

3 Q. You said Tai He and CAC, but my question was whether
4 Willowood used JDM Research to test samples of azoxy technical
5 from Tai He?

6 A. Correct.

7 Q. All right. And JDM Research is a company that is owned by
8 Mr. Mundhra, correct?

9 A. Correct.

10 Q. JDM was provided with samples -- azoxy samples from Tai
11 He, correct?

12 A. Correct, and in addition to CAC samples as well.

13 Q. Right. But I don't want to talk about the CAC samples,
14 though. I just want to -- as you said, they were provided with
15 samples from Tai He. And Tai He is the manufacturer of the
16 azoxy technical that Willowood uses, correct?

17 A. That's correct.

18 Q. Okay. And JDM tested those azoxy samples from Tai He to
19 determine whether or not DABCO was present in the Tai He
20 samples, correct?

21 A. Correct.

22 Q. The test method that JDM used was the method of detection
23 that had been developed by CAC, correct?

24 A. CAC had provided them a method, but it was never carried
25 out using that method.

1 Q. Well, your understanding, though, is that the CA -- well,
2 let me back up on that, make sure we're clear.

3 JDM used CAC's method of detection, correct?

4 A. What I've learned since is that that's not the case.

5 Q. Well, at the time that you were deposed, your
6 understanding was that JDM used CAC's method of detection,
7 correct?

8 A. Correct.

9 Q. And your understanding was that CAC's method of testing is
10 capable of detecting the parts per billion -- at the parts per
11 billion level, correct?

12 A. That's what they had indicated, yes.

13 Q. And the JDM tests of Tai He's azoxystrobin found DABCO
14 present, correct?

15 A. That's what I was told at the time, yes.

16 **MR. LEVINE:** Thank you, Mr. Heinze. No further
17 questions.

18 **THE COURT:** All right. Questions for Willowood?

19 **MR. NEUMAN:** Yes. Thank you, Your Honor.

20 CROSS-EXAMINATION

21 **BY MR. NEUMAN**

22 Q. Mr. Heinze, good morning.

23 A. Good morning.

24 Q. Now, at the outset of Mr. Levine's questioning, he asked
25 you to introduce yourself to the jury. I would like to go back

1 to the introduction.

2 You are the president and CEO of Willowood USA, I believe
3 you testified?

4 A. Yes, I am.

5 **THE COURT:** And just a second. Can you get that mike
6 a little bit closer to you --

7 **MR. NEUMAN:** Absolutely.

8 **THE COURT:** -- so that you don't have to lean over
9 and so that we can hear better?

10 **MR. NEUMAN:** Thank you.

11 **THE COURT:** Yes. All right. That's good.

12 **BY MR. NEUMAN**

13 Q. And when did you form Willowood USA?

14 A. November of 2009.

15 Q. And whom did you form Willowood USA with?

16 A. I co-founded Willowood USA with Vijay Mundhra, still my
17 partner, based out of Hong Kong.

18 Q. And why did you form Willowood USA, LLC, in 2009?

19 A. I saw a tremendous business opportunity. The agrichemical
20 market is a very mature industry, and a tremendous amount of
21 products are in a post-patent environment, that encouraged
22 generics to come to the marketplace. And we believed that
23 there was a great opportunity to provide high-quality products
24 to the American farmer at more affordable prices than the
25 multinational branded products.

Q. And prior to forming Willowood USA, LLC, Mr. Heinze, had you had experience and background in agriculture and agrichemical products?

A. Yes, I have. I've spent the last close to 30 years in the crop protection chemical industry. I started with a multinational company, a French company, Rhone-Poulenc, that later merged with a German company, AgrEvo, to form Aventis, that was acquired a few years ago that now operates, as we talked yesterday, Bayer CropScience.

In the year 2000, I saw an opportunity in the post-patent segment and went out and created my first business, a generic company called AgValue.

Q. What did you -- for what years did you work at Bayer?

A. From 1992 to 2001.

Q. What did you do while you worked there?

A. Initially, I was a sales representative, and then I moved into a western regional account management position. I also managed the horticulture crop team on a national level for Aventis.

Q. Do you have any post-high school degrees?

A. I do. I hold a bachelors of science degree in agriculture from California State University-Chico.

Q. And when did you obtain that degree, sir?

A. 1982.

Q. And why did you decide to concentrate in that field, in

1 agriculture?

2 A. I'm proud to say I'm a third generation farmer. My
3 grandfather was a German immigrant that farmed. My father was
4 a farmer. I raised my children on a walnut and orange orchard
5 in the Central San Joaquin Valley of California. I'm proud to
6 say, my youngest son, who has worked for us in the past, is a
7 fourth generation agriculturist, if you will. But just fell in
8 love with agriculture at a young age and knew that it was
9 something I wanted to do for a livelihood.

10 Q. What was your first job after graduating college?

11 A. I served as an agronomist for a large corporate farming
12 entity, the JG Boswell. I was responsible for soil fertility,
13 pest control, planting, harvesting on 25,000 acres of primarily
14 cotton, but safflower, wheat, seed alfalfa, processing
15 tomatoes, garlic, and onions.

16 Q. And for how long did you hold that position -- hold that
17 job?

18 A. Five years.

19 Q. Until?

20 A. Until I left to join Rhone-Poulenc in 1992.

21 Q. And how long were you at Rhone-Poulenc?

22 A. Nine years, 1992 through 2001.

23 Q. And what did you do at Rhone-Poulenc?

24 A. Again, I was a sales representative, initially, covering
25 just two-county area, and then moved into western regional

1 account management, where I had headquarter account
2 responsibility for California, Arizona, and Hawaii.

3 Q. What was Rhone-Poulenc's business?

4 A. Crop protection. We manufactured herbicides,
5 insecticides, fungicides, plant growth regulators.

6 Q. And when did you leave Rhone-Poulenc, I'm sorry?

7 A. 2001.

8 Q. And where did you go then?

9 A. I formed my first post-patent crop protection chemical
10 company called AgValue. That's capital A, lower case G,
11 capital V-A-L-U-E. Was a similar business to that of
12 Willowood USA.

13 Q. And how long did you have that business, sir?

14 A. Four years. In late --

15 Q. What happened then?

16 A. Late 2004, we were successful beyond our greatest
17 expectations. And during a period of industry consolidation,
18 we sold the business to a large generic company out of India,
19 United Phosphorus, that's publicly traded on the Mumbai Stock
20 Exchange.

21 Q. What year was that, that you sold the business to UPL?

22 A. November of 2004.

23 Q. Pardon?

24 A. November of 2004.

25 Q. And what did you do then?

1 A. I -- as a result of the sale of that business, I agreed to
2 a five-year non-compete. My children were all raised. I had
3 always wanted to own a registered cattle operation, so my wife
4 and I moved to Oregon to raise cattle and sheep.

5 Q. And that non-compete ran for five years, you said?

6 A. That's correct.

7 Q. So that was until 2009?

8 A. That's correct.

9 Q. And that's when you formed Willowood USA?

10 A. That's correct.

11 Q. How many people does Willowood USA employ?

12 A. It continues to grow. It's approximately 20 today.

13 Q. And how many professionals would you say are employed by
14 Willowood USA?

15 A. Over half, so 10 or 12.

16 Q. And we've heard about Mr. Mundhra. What is Mr. Mundhra's
17 background?

18 A. Mr. Mundhra holds a degree in chemistry from -- I'm not
19 sure of the university, out of India.

20 Q. And how did you meet Mr. Mundhra?

21 A. Mr. Mundhra was my sourcing arm for my first company,
22 AgValue, out of mainland China. At the time, he had a partner.
23 His English name was John Sherman. And sourcing products out
24 of India, being a form of British Commonwealth, English was
25 spoken as a second language, but when you got to China, the

1 language barrier was very significant. And Mr. Mundhra had a
2 partner that was bilingual, spoke both Mandarin, Cantonese, and
3 English as well.

4 Q. What business was Mr. Mundhra in?

5 A. The sourcing of agricultural chemicals.

6 Q. And we've heard also about Joe Middione, who is the chief
7 operating officer of Willowood USA. Can you just describe
8 briefly his background?

9 A. Mr. Middione started his professional career as a research
10 biologist for the FMC Corporation that also continues to
11 operate in the crop protection chemical space, later moved to
12 American Cyanamid in various roles, and ultimately as a
13 district sales manager, regional sales manager.

14 Q. For what kinds of products?

15 A. Crop protection chemicals as well.

16 Q. We've also seen e-mails with the name Andy King. What is
17 Mr. King's background?

18 A. Mr. King also has a degree in agronomy, grew up on a farm.
19 Andy and I met at Rhône-Poulenc. After I left to form AgValue,
20 Andy stayed with Rhône-Poulenc through the Bayer acquisition
21 and saw the press release that I had formed Willowood USA. He
22 said, "I liked what you did at AgValue; and if there is an
23 opportunity for me to join your organization, I would like to
24 do so." So we brought Andy on as part of the team.

25 Q. Does Willowood USA belong to any professional associations

1 comprising other companies of the ag chemical industry?

2 A. Yes, we do, quite a few.

3 Q. Can you give a couple of examples?

4 A. Sure. CropLife; CAPCA, which stands for California
5 Agriculture Production Consultants Association; ARA, Ag
6 Retailers Association; Midwest Crop Protection Association.
7 Then quite a few more.

8 Q. And do Willowood personnel serve on any committees in any
9 of those organizations?

10 A. Yes, they do.

11 Q. How many different active pesticide ingredients has
12 Willowood registered with the Environmental Protection Agency?

13 **MR. LEVINE:** Objection, relevance.

14 **THE COURT:** Overruled. He can give some background.
15 You can answer.

16 **THE WITNESS:** Thank you.

17 In excess of 25 active ingredients and well over 50
18 end-use formulated products.

19 **BY MR. NEUMAN:**

20 Q. Are there particular types of pesticides that you've
21 registered? We've heard about fungicides, herbicides and so
22 on.

23 A. We started initially with herbicides, which have a much
24 more predictable use pattern. They are the first thing a
25 farmer will use in a season. And then once we had established

1 a pretty substantial portfolio of herbicides, we began to add
2 fungicides, insecticides, and plant growth regulators that have
3 a much less predictable use pattern.

4 Q. And where is Willowood USA based, sir?

5 A. Originally, cofounded in Roseburg, Oregon, where I reside.
6 We're in the process and almost final relocating of the
7 business to Broomfield, Colorado, a suburb of Denver.

8 Q. Where does Willowood USA sell its pesticide products?

9 A. Throughout the US.

10 Q. Let's talk a little about Willowood Limited. Where are
11 its offices located?

12 A. Hong Kong.

13 Q. You said yesterday that Mr. Mundhra owns Willowood
14 Limited. Do you recall that testimony?

15 A. I do.

16 Q. Do you have any ownership stake in Willowood Limited?

17 A. I do not.

18 Q. Do any of the other owners of Willowood USA have any
19 ownership stake in Willowood Limited?

20 A. No, they do not. The only common denominator is Vijay
21 Mundhra is an owner of -- one of the four owners of Willowood
22 USA, but none of the other owners have ownership in any of the
23 other businesses.

24 Q. Do you have any management role in the operations and
25 management of Willowood Limited?

09 1 A. I do not.

09 2 Q. Do any of the principals of Willowood USA have any role in
09 3 the management of Willowood Limited?

09 4 A. They do not.

09 5 Q. Now, you said yesterday that Willowood USA buys its
09 6 azoxystrobin technical from Willowood Limited. Do you recall
09 7 that testimony?

09 8 A. I do.

09 9 Q. Do Willowood USA and Willowood Limited have an agreement
09 10 as to the terms under which Willowood USA will purchase
09 11 azoxystrobin technical from Willowood Limited?

09 12 A. Yes, we do.

09 13 Q. Do you have the binder that Mr. Levine handed you
09 14 yesterday?

09 15 A. I do.

09 16 Q. Could you please turn to Plaintiff's 14 in that binder?

09 17 **MR. LEVINE:** Objection, Your Honor. Both beyond the
09 18 scope and also relevance. I'm happy to explain too, if you
09 19 would like, in sidebar.

09 20 **THE COURT:** Well, he can go ahead and ask his
09 21 questions of the witness. I don't know what he is going to ask
09 22 him, so I don't know how to evaluate the relevance.

09 23 So go ahead with your questions.

09 24 You can object again.

25

1 **BY MR. NEUMAN:**

2 Q. Do you have Plaintiff's 14 in front of you?

3 A. Yes, I do.

4 Q. Do you recognize this document?

5 A. I do.

6 Q. What is it?

7 A. It's a supply agreement between Willowood Limited and
8 Willowood USA.

9 **THE COURT:** Was this admitted yesterday?

10 **MR. NEUMAN:** It is in the binder.

11 **MR. LEVINE:** No.

12 **THE COURT:** No. Okay.

13 **MR. NEUMAN:** It is in the binder that Mr. Levine --

14 **THE COURT:** Right. I was just asking if it was
15 admitted yesterday. Okay. Go ahead.

16 **BY MR. NEUMAN:**

17 Q. And you signed this agreement on behalf of Willowood USA?

18 A. I did.

19 Q. And Mr. Mundhra signed it on behalf of Willowood Limited?

20 A. Yes, he did.

21 **MR. NEUMAN:** Your Honor, I move admission of
22 Plaintiff's 14.

23 **THE COURT:** Can counsel just approach the bench
24 briefly?

25 (Bench conference as follows:)

1 **THE COURT:** So what's your relevance objection?

2 **MR. LEVINE:** This is a 2014 agreement. The only
3 issue about the sale from Willowood Limited to Willowood USA
4 relates to the compound patents. That was in 2013. There is
5 no issue in this case --

6 **THE COURT:** Okay.

7 **MR. LEVINE:** -- with respect --

8 **THE COURT:** What is your response on that?

9 **MR. NEUMAN:** The response is I'm going to ask if
10 these were the terms that were in effect between the parties
11 prior to that time.

12 **THE COURT:** But you don't have a written agreement?

13 **MR. NEUMAN:** I do not.

14 **THE COURT:** Okay. All right. I understand. I'll --
15 you can cross -- well, in effect, cross-examine. I'll let you
16 do it. I'll overrule the objection.

17 **MR. LEVINE:** Your Honor, I don't want to interrupt
18 continuously, but this is really -- he's doing his direct.

19 **THE COURT:** Ordinarily I just -- you know, rather
20 than having to recall witnesses, I let people, you know, ask
21 whatever they want to of the witness.

22 Is it going to be long?

23 **MR. NEUMAN:** If I may, for the record, counsel
24 yesterday spent a good deal of time with this witness trying to
25 establish that Willowood USA and Willowood Limited effectively

1 were one and the same. His testimony is related to showing
2 that there is a distinction between the two.

3 **THE COURT:** Right. I don't think you've gone
4 necessarily much farther than what he went on direct. Okay.
5 Let's go.

6 (Bench conference concluded.)

7 **THE COURT:** All right. Overruled. You may proceed.
8 You were asking about the date.

9 **MR. NEUMAN:** Is it admitted, Your Honor?

10 **THE COURT:** Yes, it will be admitted.

11 **MR. NEUMAN:** Permission to publish?

12 **THE COURT:** Yes.

13 **BY MR. NEUMAN:**

14 Q. Mr. Heinze, I would like you to look -- first of all, does
15 this agreement reflect the terms under which Willowood USA and
16 Willowood Limited agreed that these purchase transactions of
17 azoxystrobin technical would take place?

18 A. Yes, it does.

19 Q. Would you look, please, at paragraph 2?

20 **MR. NEUMAN:** Could you bring that up?

21 **THE COURT:** Okay. Can you just go over the dates
22 about this? Because it is dated November 2014 so --

23 **BY MR. NEUMAN:**

24 Q. This agreement is signed as of November 2014,
25 Mr. -- November 15, 2014, is that right?

09 1 A. That is correct.

09 2 Q. Now, was Willowood USA in fact purchasing azoxystrobin
09 3 technical from Willowood Limited prior to that date?

09 4 A. Yes, we did.

09 5 Q. And does this agreement reflect the terms under which
09 6 Willowood USA and Willowood Limited had agreed to enter into
09 7 those transactions dating back to the beginning?

09 8 A. The beginning of the agreement? The date of the
09 9 agreement?

09 10 Q. The beginning of the time when you were purchasing
09 11 azoxystrobin --

09 12 A. Yes, it does.

09 13 Q. -- from Willowood Limited.

09 14 A. There was a preceding agreement that lasted for five years
09 15 and if you look at -- starting in November of 2009, a five-year
09 16 agreement. This was renewing an agreement, so there was -- we
09 17 had purchased earlier under the other old agreement and then
09 18 subsequently this agreement is still in force today.

09 19 Q. So, again, if we could please look at paragraph 2.1. Do
09 20 you see where it says: The purchase price for each of the
09 21 products shall be 102.5 percent of seller's cost, defined
09 22 below, for the product's purchase price? Do you see that?

09 23 A. Yes, I do.

09 24 Q. Who was the seller?

09 25 A. Willowood Limited to Willowood USA.

Q. And when -- does this agreement accurately -- does this provision accurately reflect the terms under which Willowood -- the purchase price under which Willowood USA would pay Willowood Limited for its azoxy technical?

A. Yes. It's transferred at the same price from the factory. The factory sells to Willowood Limited. Willowood Limited sells to Willowood USA at the same price. The 2 1/2 percent is paid to Willowood Limited for all the behind -- working with the factories, coordinating the freight, testing of the material to ensure quality prior to, but the two -- so, yes, in fact, this does reflect accurately the purchase price from Willowood Limited to Willowood USA.

THE COURT: Okay. And this is how it was done in 2013. Is that what you are saying?

THE WITNESS: Yes, it was. It was just a renewal of a five-year agreement, Your Honor.

BY MR. NEUMAN:

Q. Does Willowood Limited receive any separate commission or compensation based on sales of azoxystrobin that Willowood USA makes in the United States?

A. Nothing more than the 2 1/2 percent.

Q. Is that on sales or how is the 2 1/2 percent calculated? 2 1/2 percent on what?

A. 2 1/2 percent of the total value of the product being shipped. So if it's \$100,000, it would -- 2.5 percent would be

1 \$2,500.

2 Q. Could you please take a look at paragraph 3.1 of this
3 agreement, Mr. Heinze?

4 **MR. NEUMAN:** If you could pull that up.

5 **BY MR. NEUMAN:**

6 Q. Do you have that in front of you?

7 A. I do.

8 Q. Do you see that this agreement refers to invoices for
9 products purchased?

10 A. I do.

11 Q. Are invoices customarily issued by Willowood Limited to
12 Willowood USA when Willowood USA purchases azoxystrobin
13 technical?

14 A. Yes, they are.

15 Q. Has that been the practice since Willowood USA began
16 purchasing azoxystrobin technical from Willowood Limited?

17 A. Yes, it is.

18 Q. Could you -- I would like to show you Defendant's Exhibit
19 15.

20 **MR. NEUMAN:** May I approach?

21 **THE COURT:** You may.

22 **BY MR. NEUMAN:**

23 Q. Do you recognize this document?

24 A. I do.

25 Q. What is it?

1 A. It's an invoice from Willowood Limited to Willowood
2 Azoxystrobin LLC.

3 Q. What is the date?

4 A. June 30, 2014.

5 **MR. NEUMAN:** Your Honor, I move for admission of
6 Defendant's 15.

7 **MR. LEVINE:** No objection.

8 **THE COURT:** It will be admitted.

9 **MR. NEUMAN:** Permission to publish?

10 **THE COURT:** You may.

11 **BY MR. NEUMAN:**

12 Q. Do these invoices -- does this invoice accurately reflect
13 the terms under which Willowood USA purchases azoxystrobin
14 technical from Willowood Limited?

15 A. It does.

16 Q. And do you see in the right-hand side of the document it
17 says "FOB Hong Kong"?

18 A. I do.

19 Q. What does FOB Hong Kong mean?

20 A. Free on board Hong Kong, meaning that -- when we took
21 possession of the goods in Hong Kong.

22 Q. And what does FOB mean to you?

23 A. Free on board.

24 Q. Could you describe in more detail the process by which
25 azoxystrobin technical is shipped out of Hong Kong to the

1 United States in connection with sales of azoxystrobin?

2 **THE COURT:** Okay. Are you talking about back in
3 2013?

4 **MR. NEUMAN:** Yes.

5 **THE COURT:** Okay. Go ahead.

6 **MR. NEUMAN:** And 2014.

7 **THE WITNESS:** 2014, Your Honor.

8 **THE COURT:** Go ahead.

9 **MR. NEUMAN:** I'm talking about 2014.

10 **THE COURT:** 2014. All right. Go ahead.

11 **THE WITNESS:** This particular shipment was an air
12 shipment was the only reason that it was shipped from Hong
13 Kong. Most shipments leave from Shanghai by sea and arrive
14 into Long Beach or Los Angeles and then are moved via truck and
15 rail to the final destination, but this particular shipment was
16 from Hong Kong.

17 **BY MR. NEUMAN:**

18 Q. How does Willowood Limited know where to send product?

19 A. We provide them that instruction. They issue initially
20 what's called a sales contract and then one of my production
21 planners will issue a corresponding purchase order that would
22 have the final destination.

23 And as we discussed yesterday, all of our azoxystrobin had
24 been formulated at a contract manufacturing facility, AgraForm,
25 in St. Louis, Missouri, so ultimate destination of this

1 shipment and all other azoxystrobin shipments would have been
2 to AgraForm in St. Louis, Missouri.

3 Q. What are the relevant roles of Willowood USA and Willowood
4 Limited in the mechanics of the transportation process?

5 A. The transportation is all coordinated by the mainland
6 China team, SSJ's team, and we ship these what we term door to
7 door, so they will -- it's very unusual that we would ever ship
8 product by air because it is very expensive, but most shipments
9 are done by sea. Once they clear US Customs and clear EPA
10 approval, the containers are offloaded, put on a flatbed
11 chassis truck, moved to a rail yard.

12 In the case of AgraForm in St. Louis, I believe the final
13 destination by rail is Memphis, Tennessee, and then from
14 Memphis, Tennessee, to St. Louis it's trucked. The goods are
15 offloaded and then the container is returned to the rail yard
16 in Memphis.

17 Q. Now, when you say that Willowood Limited makes the
18 arrangements, with whom did they make the arrangements? How do
19 they go about making the arrangements?

20 A. With a freight forwarding company and we predominantly use
21 a company by the name of Hughes Shipping that has offices both
22 in Hong Kong, Shanghai, and in the US in New Jersey. So they
23 help facilitate since they have offices both in Asia and the
24 US.

25 Q. Whom does Willowood Limited discuss these mechanics,

1 logistics with in terms of whether they are located in Hong
2 Kong or the United States?

3 A. That's coordinated --

4 Q. When you talk to Hughes --

5 A. Hughes --

6 **THE COURT:** Wait a second. If the witness can let
7 him finish the question before you start answering him and then
8 Mr. Neuman will be sure to let you finish your answer before he
9 asks another question.

10 **THE WITNESS:** I'm sorry, Your Honor.

11 **THE COURT:** That's all right.

12 **BY MR. NEUMAN:**

13 Q. Let me rephrase. When Willowood Limited makes these
14 arrangements with a third-party contractor like Hughes, where
15 are they making those arrangements?

16 A. In the mainland China office.

17 Q. And when these products arrive in the United States, do
18 they have to clear customs?

19 A. Yes, they do.

20 Q. Who handles the customs when azoxystrobin technical
21 arrives in the US?

22 A. One of my team.

23 Q. I'm sorry.

24 A. One of my team members.

25 Q. Willowood USA?

1 A. Yeah. I have two production planners. One of the two
2 production planners would clear customs and also clear EPA.

3 Q. Who pays the third-party contractor who makes the actual
4 logistical arrangements for the transportation of the goods out
5 of Hong Kong?

6 A. Initially, the mainland China office, but we reimburse for
7 the freight. It's part of the agreement.

8 Q. The mainland China office of whom?

9 A. It's called Willowood China, I believe. It would be part
10 of Willowood Limited's team.

11 Q. You say they make the initial payment to the third-party
12 contractor?

13 A. They make the payment to the third-party contractor. Then
14 Willowood USA reimburses them for the freight.

15 Q. Who -- as between Willowood Limited and Willowood USA, who
16 deals with the Environmental Protection Agency concerning any
17 regulatory- or registration-related matters that might arise
18 with respect to azoxystrobin that is shipped into the United
19 States?

20 A. Solely Willowood USA.

21 Q. Who makes the arrangements with formulators of end-use
22 products and laboratories once the product is in the United
23 States for testing and formulation work?

24 A. Willowood.

25 **MR. NEUMAN:** May I approach?

1 **THE COURT:** Yes.

2 **MR. NEUMAN:** (Inaudible.)

3 **THE COURT:** I'm sorry. Say again.

4 **MR. NEUMAN:** Defendant's 16.

5 **BY MR. NEUMAN:**

6 Q. Mr. Heinze, you've been handed what's been marked as
7 Defendant's Exhibit 16 for identification. Do you recognize
8 it?

9 A. I do.

10 Q. What is it?

11 A. It appears to be a bill of lading for a shipment of
12 azoxystrobin technical.

13 Q. Is this type of document typically issued with respect to
14 shipments of azoxystrobin technical into the United States that
15 Willowood USA purchases from Willowood Limited?

16 A. Yes, it is.

17 Q. Is it typical of the type of bill of lading that was
18 issued in 2014?

19 A. Yes, it is.

20 **MR. NEUMAN:** Move to admit Defendant's 15 -- 16, I
21 beg your pardon.

22 **THE COURT:** It'll be admitted.

23 **MR. NEUMAN:** Will you please put up Defendant's 16.

24 **BY MR. NEUMAN:**

25 Q. Mr. Heinze, does this -- who issues this bill of lading?

1 A. Willowood Limited.

2 Q. And does it reflect -- does this bill of lading reflect
3 the third party contractor that you were talking about earlier?

4 A. This particular bill of lading reflects T.H. Mason
5 Logistics, so another freight forwarding company.

6 Q. It's another -- is that another third party contractor
7 whom you use, whom Willowood Limited uses?

8 A. Yes, it is.

9 Q. Let's talk about the events -- thank you. You can take
10 that down.

11 Let's talk about the events in mid-2013 concerning the
12 importation of 5 kilograms of azoxystrobin technical for
13 formulation work chemical testing.

14 **THE COURT:** Keep your voice up, Mr. Neuman.

15 **BY MR. NEUMAN:**

16 Q. Let's talk about the events in mid-2013 concerning the
17 importation of 5 kilograms of azoxystrobin technical for
18 purposes of formulation, development and chemical testing.

19 Now, do you recall your testimony yesterday that when the
20 5 kilogram sample was imported into the United States in 2013,
21 you were aware that the importation may infringe Syngenta's
22 compound patents?

23 A. Yes.

24 Q. Could you explain further what your awareness was.

25 A. We had a basic understanding that there could be some

1 patents still in place on azoxystrobin, but at that point did
2 not have a Freedom to Operate Opinion from our patent attorney.

3 Q. At some point after the material was imported, that
4 5 kilograms was imported, did you realize that there may have
5 been an infringement?

6 A. I did.

7 Q. When was that in relation to the importation?

8 A. Shortly after, within a week or two.

9 Q. What did you do when you realized that you had done that?

10 A. I immediately contacted our patent attorney, Mr. Chris
11 Hayden.

12 Q. And, at that point, why didn't you just stop the activity?

13 A. Well, after discussing with Mr. Hayden, he indicated that
14 I had made a significant mistake and that the damage was done,
15 the physical act of importation, if in fact infringed, would be
16 infringement and packaging it up and shipping the 5 kilograms
17 out of the country would not change a thing.

18 Q. Now, is it your belief that by importing the 5 kilograms
19 to do the formulation and testing in the United States, that
20 that enabled Willowood to obtain azoxystrobin registrations and
21 get into the market quicker than it otherwise could have?

22 A. Not at all.

23 Q. And why is that?

24 A. Because the testing could have been done overseas, the
25 same testing.

1 Q. Does Willowood have relationships with laboratories and
2 formulators like Adjuvants Unlimited and ARC Laboratories that
3 operate overseas?

4 A. Absolutely.

5 Q. Has it used those laboratories and formulators for
6 formulation work and chemical testing for other compounds
7 overseas in the past?

8 A. We have.

9 Q. Is there any reason why you could not have done that
10 formulation work and chemical testing overseas with respect to
11 this particular 5 kilograms of azoxystrobin technical?

12 A. No, there is not. Quite frankly, it was gross negligence
13 on my behalf, and I don't know that we'd be sitting here today
14 if I had thought through that clearly.

15 Q. Now you retained Mr. Hayden in 2013?

16 A. We did.

17 Q. He's a patent attorney?

18 A. Yes, he is.

19 Q. Why did you hire him?

20 A. Because we respect the intellectual property of others
21 very much so, and we want to avoid situations like this. We
22 checked initially, we double-checked, we triple checked. We
23 respect the intellectual property of others, and especially
24 when you were looking to develop products that are just
25 approaching or have been in a post-patent environment, we want

1 to make absolutely sure that we're not violating anybody else's
2 intellectual property rights.

3 Q. And how did you become aware of Mr. Hayden?

4 A. Through one of our regulatory consultants, Jim Wagner.

5 Q. And prior to hiring Mr. Hayden, did you -- was he the only
6 person you interviewed for that task?

7 A. We had worked with one other gentleman that was in the
8 process of retiring. He did some work for us, intellectual
9 property work for us, but once we met Mr. Hayden, we
10 transitioned all of our patent work to his firm, Hayden Stone.

11 Q. And what made you decide to go with Mr. Hayden?

12 A. Mr. Hayden is a Ph.D. chemist. He's a bright, articulate
13 man that went back to law school. He worked for the patent
14 office, and we felt his credentials were exactly what we were
15 looking for.

16 Q. And in 2013, did he provide you with an opinion concerning
17 Syngenta's azoxystrobin -- any of Syngenta's azoxystrobin
18 patents?

19 A. Yes, he did.

20 **MR. NEUMAN:** May I approach?

21 **THE COURT:** You may.

22 **MR. LEVINE:** Your Honor, may we have a sidebar?

23 **THE COURT:** Okay.

24 (Bench conference as follows:)

25 **THE COURT:** Get very close.

1 **MR. LEVINE:** They're not relying on the 2013 opinion
2 for -- to defend against allegations of wilfulness. They're
3 only relying on Mr. Hayden's July 2014 and September 2014
4 opinions.

5 **MR. NEUMAN:** This is all about showing lack of
6 wilfulness and their desire from the outset to get things
7 right, right from the get-go.

8 **THE COURT:** Okay. Well, I don't understand why
9 that's not relevant.

10 **MR. LEVINE:** Because they're not relying upon the
11 July 13 opinion to defend against the allegations of wilfulness
12 for the compound patents.

13 **MR. NEUMAN:** I don't understand that.

14 **MR. COUGHLIN:** The local rules require you to
15 disclose that, and there's a whole different process for that
16 opinion.

17 **THE COURT:** I don't --

18 **MR. NEUMAN:** They have this -- they have the opinion.
19 I don't understand.

20 **MR. LEVINE:** We can argue that.

21 **THE COURT:** Okay. Well, I'm going to let you go
22 ahead.

23 (Bench conference concluded.)

24 **THE COURT:** Go ahead.

25 **MR. NEUMAN:** May I approach the witness?

1 **THE COURT:** You may. What's the exhibit number?

2 **MR. NEUMAN:** It is Defendant's 53.

3 **BY MR. NEUMAN:**

4 Q. Mr. Heinze, you've been handed Defendant's 53 for
5 identification. Do you recognize the document?

6 A. I do.

7 Q. What is it?

8 A. It's the Freedom to Operate Opinion for azoxystrobin from
9 Chris Hayden.

10 Q. What's the date?

11 A. July 25th, 2013.

12 **MR. NEUMAN:** Move to admit Defendant's 53.

13 **THE COURT:** Subject to your objection?

14 **MR. LEVINE:** Yes.

15 **THE COURT:** Yes, okay. Overruled. It'll be
16 admitted.

17 **MR. NEUMAN:** Permission to publish?

18 **THE COURT:** I'm sorry?

19 **MR. NEUMAN:** I'm sorry, permission to publish?

20 **THE COURT:** Yes.

21 **BY MR. NEUMAN:**

22 Q. Now, if you could go down, please, to page 4 of the
23 document and specifically --

24 **THE COURT:** I'm sorry, what?

25 **MR. NEUMAN:** I'm sorry, it's a little fuzzy on the

1 screen -- and specifically paragraph 11A. Thank you.

2 **BY MR. NEUMAN:**

3 Q. IIA, Roman Numeral IIA. What is Mr. Hayden discussing
4 here?

5 A. The claims associated with, for short, the patent '138.

6 Q. Now, are you a chemist?

7 A. I am not.

8 Q. Do you understand the chemistry he's talking about here?

9 A. No.

10 Q. In July 2013, when Mr. Hayden issues this opinion, are you
11 focusing on the details of the opinion?

12 A. I am not.

13 Q. This is around the same time, as we saw yesterday, that
14 Pyxis, your consultant, is finalizing and submitting the
15 application to EPA for an azoxystrobin technical registration.
16 Do you recall that?

17 A. I do.

18 Q. Did you read the application submitted to -- by Pyxis to
19 the EPA for the azoxystrobin technical registration?

20 A. I did not. We employ the services of professionals and
21 trust that they are completing everything in compliance with
22 EPA regulations and handle the submissions on our behalf.

23 **MR. NEUMAN:** You can take the exhibit down now,
24 Chris. Thank you.

25 **BY MR. NEUMAN:**

1 Q. So is it -- does Willowood USA typically review the
2 application packages submitted by Pyxis or its other
3 consultants before they're submitted to EPA?

4 A. No.

5 Q. Do you recall yesterday you were shown by Mr. Levine where
6 in Pyxis's application it said that Tai He carries out the
7 etherification step?

8 A. I do.

9 Q. Do you know why the application said that?

10 A. I don't.

11 Q. Now, yesterday when Mr. Levine showed you that application
12 and asked if -- asked you to read where it said Tai He performs
13 the etherification step, and you read it, do you remember you
14 wanted to say something else and Mr. Levine --

15 **THE COURT:** Okay. Just ask your question.

16 **BY MR. NEUMAN:**

17 Q. Do you recall that you wanted to say something else?

18 A. I do.

19 Q. What was it that you wanted to say?

20 A. That once we had learned of the discrepancy, the
21 manufacturing procedure was changed and EPA was notified of
22 such change.

23 Q. And what was the change that was made to EPA, that EPA was
24 notified of?

25 A. That once we learned that it indicated that Tai He carried

1 out both etherification and condensation, which was incorrect,
2 we had SSJ, our general manager of the mainland China office,
3 revisit the factory of Tai He. And Mr. Wu, who owns the
4 factory, reconfirmed that he only carries out the condensation
5 step, that he buys an intermediate up through the
6 etherification step from another company, Guosheng.

7 And once we learned of that, we notified the EPA
8 voluntarily that we -- self-policing and being good stewards of
9 our own industry, made a notification to the change of the
10 manufacturing, who handled what in the production of -- who
11 handled what within the azoxystrobin manufacturing process.

12 Q. Did Tai He ever provide Willowood with a written process
13 description?

14 A. They did.

15 Q. After Mr. Hayden provided his July 2013 opinion, did you
16 seek any further opinions from him concerning the azoxystrobin
17 patents?

18 A. We did.

19 Q. Did you ask him for further guidance on that issue in
20 2014?

21 A. We did.

22 **MR. NEUMAN:** May I approach?

23 **THE COURT:** You may.

24 **MR. NEUMAN:** Defendant's Exhibit 10.

25 **THE COURT:** And if you'd say it loud enough for me to

1 hear, too.

2 **MR. NEUMAN:** I'm sorry, Your Honor.

3 **THE COURT:** That's all right.

4 **BY MR. NEUMAN:**

5 Q. Mr. Heinze, you've been handed what's been marked as
6 Defendant's Exhibit 10 for identification. Do you recognize
7 this document?

8 A. I do.

9 Q. What is it?

10 A. It's another Freedom to Operate Opinion from Mr. Hayden to
11 Willowood USA.

12 Q. What's the date?

13 A. July 18, 2014.

14 Q. And did you request Mr. Hayden to give you this opinion in
15 or about that time frame?

16 A. Yes, I did.

17 **MR. NEUMAN:** Move to admit Defendant's Exhibit 10?

18 **MR. LEVINE:** No objection, Your Honor.

19 **THE COURT:** It'll be admitted.

20 **BY MR. NEUMAN:**

21 Q. Now, Mr. Heinze, if you had already obtained an opinion
22 from Mr. Hayden in 2013, at about the time the application was
23 submitted to EPA, why were you asking him for another opinion
24 in 2014?

25 A. We were about to begin the importation process of

1 azoxystrobin technical from China to the US; and, again,
2 respecting the intellectual property of others, we absolutely
3 wanted to make sure that we were in compliance and not
4 violating any of the Syngenta patents and hence why we asked
5 for a confirmatory Freedom to Operate Opinion.

6 **THE COURT:** You were about to import it for the
7 manufacturing of the end product? Is that --

8 **THE WITNESS:** Yes, Your Honor.

9 **THE COURT:** Go ahead.

10 **MR. NEUMAN:** Could you please put Exhibit 10 on the
11 screen, and if you scroll down to the second page of the
12 exhibit, please.

13 **BY MR. NEUMAN:**

14 Q. Is there a discussion there, again, by Mr. Hayden of the
15 '138 patent?

16 A. Yes, there is.

17 Q. Now, in addition to obtaining this opinion, second opinion
18 from Mr. Hayden in 2014, in that time frame, did Willowood take
19 any other steps to try and insure that it was not infringing on
20 Syngenta's azoxystrobin patents?

21 A. Can you please repeat the question.

22 Q. Yes. In -- about the same time frame, in the spring of
23 2014, did Willowood do anything else to try and reassure itself
24 that it was not infringing?

25 A. Yes, we did.

1 Q. What did you do?

2 A. We again sent SSJ, our general manager from the mainland
3 China office, to Tai He's factory to confirm again that Tai He
4 was only carrying out the condensation step and that they were
5 purchasing an intermediate up through the etherification step
6 from a third party in an arm's length transaction.

7 Q. I'd like you to look at the binder that Mr. Levine gave
8 you yesterday and take a look at Plaintiff's 31, which is in
9 evidence.

10 A. Okay. I have it in front of me.

11 Q. So if we look at the bottom half of the page, there's an
12 e-mail there from SSJ to you dated May 30, 2014, that you
13 looked at yesterday with Mr. Levine. Do you recall that?

14 A. I do.

15 Q. And in that e-mail, SSJ is reporting on -- summarizing
16 what he found in the field when he went to the plants?

17 A. That is correct.

18 Q. So when you saw this e-mail, what did you think?

19 A. I believed that we were doing things correctly and that
20 this confirmed SSJ's visit. He took pictures of the various
21 factories carrying out the various steps of the production of
22 intermediates that ultimately led to -- and that we were not
23 violating any of the Syngenta patents.

24 Q. And did you send this along to Mr. Hayden?

25 A. I did.

MR. NEUMAN: May I approach?

THE COURT: Yes. With Defendant's what?

MR. NEUMAN: Defendant's 9.

BY MR. NEUMAN:

Q. You've been handed what has been marked as Defendant's 9 for identification. Do you recognize the document?

A. I do.

Q. And what does it consist of?

A. The last piece is an e-mail from myself to Chris Hayden with a copy to Vijay Mundhra.

Q. And I'd like you to turn, please, to the second page of this document, which is Willowood 26328?

MR. NEUMAN: Could you pull that up, please.

This document is already in evidence.

THE COURT: Defendant's 9? I don't know. Is it?

MR. NEUMAN: I beg your pardon. I move to admit.

MR. LEVINE: No objection.

THE COURT: It will be admitted.

THE COURT: And the page number I think the Court reporter needed you to repeat.

MR. NEUMAN: Willowood 26328.

BY MR. NEUMAN:

Q. Do you see in the middle of this page -- is that an e-mail that you sent Chris Hayden on May 30, 2014?

A. I do.

1 Q. And in that e-mail, you were forwarding SSJ's report from
2 the field to Mr. Hayden?

3 A. I do.

4 Q. And if you'd please look at the second sentence of your
5 e-mail, this should -- could you pull that up, please, Chris.

6 Do you see where you said, "This should give us the
7 confidence that we are not in violation of either one of the
8 two Syngenta patents"? Do you see that?

9 A. I do.

10 Q. And when you say "this should give us the confidence,"
11 what are you referring to there?

12 A. Well, the fact that we had gone to the extent to send SSJ
13 back to the factory to understand who carried out what steps in
14 the manufacture of azoxystrobin technical, and he came back
15 with -- that it was broke up with various factories, that I
16 felt we were not in violation of any of the Syngenta's
17 azoxystrobin patents, and forwarded that to our patent
18 attorney, Chris Hayden.

19 Q. So at this time what was your understanding as to whether
20 or not Willowood was infringing any Syngenta patents pertaining
21 to azoxystrobin?

22 A. As I just stated, I felt that we were not in violation of
23 any of the Syngenta patents.

24 **MR. NEUMAN:** May I approach?

25 **THE COURT:** You may.

1 **MR. NEUMAN:** Defendant's 11.

2 **BY MR. NEUMAN:**

3 Q. Mr. Heinze, you've been handed what's been marked for
4 identification as Defendant's Exhibit 11. Do you have that in
5 front of you?

6 A. Yes, I do.

7 Q. What does the document consist of?

8 A. It's an e-mail from Chris Hayden to myself and Peter
9 Davis, one of our attorneys here in the room today.

10 Q. And would you look, please, at 26 -- Bates stamp 26241.

11 A. Where would I --

12 Q. It's the next to the last page of the document.

13 A. Okay.

14 Q. I'm sorry. It's not the next to the last page. The
15 fourth page of the document.

16 A. I have it open.

17 Q. Do you recognize what this is?

18 A. It's part of Mr. Hayden's opinion, I believe.

19 Q. What's the date?

20 A. March 30th, 2015.

21 **MR. NEUMAN:** Your Honor, move to admit Defendant's
22 11.

23 **MR. LEVINE:** No objection.

24 **THE COURT:** It will be admitted.

25 **MR. NEUMAN:** Could you put this exhibit up on the

1 screen, please, Defendant's 11.

2 **BY MR. NEUMAN:**

3 Q. Specifically, I would like -- if you could, please, go to
4 page 26241.

5 Now, this is an opinion from Mr. Hayden dated March 30,
6 2015, correct?

7 **THE COURT:** It's really blurry on my screen. Can you
8 all see it okay? No. Go ahead.

9 **BY MR. NEUMAN:**

10 Q. This is an opinion issued by Mr. Hayden in March -- on
11 March 30, 2015, concerning the Syngenta patents, a reproduction
12 of that opinion?

13 A. Yes, it is. Yes, it is.

14 Q. Now, did you ask Mr. Hayden for another opinion on these
15 patents in March of 2015?

16 A. We did.

17 Q. Why did you do that when you had an opinion in 2013 and an
18 opinion in 2014?

19 A. Because this was -- Syngenta had filed suit against
20 Willowood USA, and, again, we wanted to make absolutely sure
21 that we were not in violation of any of their patents.

22 Q. And if we go, please, to page 26238 and 239 of this
23 document.

24 **THE COURT:** Which page?

25 **MR. NEUMAN:** 26238 and 26239.

1 **BY MR. NEUMAN:**

2 Q. Do you have that in front of you?

3 **THE COURT:** Which page are you asking him about, 38
4 or 39?

5 **MR. NEUMAN:** 26238.

6 **THE COURT:** Carrying over into 39?

7 **MR. NEUMAN:** Yes.

8 **THE COURT:** All right.

9 **BY MR. NEUMAN:**

10 Q. Is this an e-mail that you sent to Chris Hayden?

11 A. Yes, it is.

12 Q. And do you see at the top of 26239, you say, "Here is the
13 reconfirmation" -- will you pull that up, please -- "on the
14 azoxystrobin manufacturing process"? Do you see that?

15 A. I do.

16 Q. That's what you were telling Mr. Hayden on April 1st,
17 2015?

18 A. I don't see the date here, but I assume that's correct.

19 Q. It's at the bottom of the previous page.

20 A. Yes.

21 Q. What do you mean -- and you were forwarding at this
22 point -- what were you forwarding to Mr. Hayden?

23 A. Can we enlarge the e-mail below that?

24 **THE COURT:** Below that, the chemistry part?

25 **THE WITNESS:** Yes, ma'am. I forwarded the e-mail to

1 Chris Hayden. This came to me from Sophia, who's an
2 administrative assistant in the Mainland China Willowood
3 office.

4 **BY MR. NEUMAN:**

5 Q. And you say -- if you go back up to your e-mail, you say
6 to him, "Here is the reconfirmation on the azoxystrobin
7 manufacturing process." Do you see that?

8 A. I do.

9 Q. And this was on April 1st, 2015, right after the lawsuit
10 was filed?

11 A. That is correct.

12 Q. What do you mean by "here is the reconfirmation"?

13 A. Well, again, we very strictly adhered to respecting other
14 people's intellectual properties. The fact that we had now
15 been sued, we wanted to make absolute sure that we were not in
16 violation of any of these patents. So I had sought SSJ to
17 obtain this information. Sophia obtained it and forwarded it
18 to us, and I forwarded that on to Chris Hayden.

19 Q. So at this point what's your understanding as to whether
20 Willowood is infringing the '138 patent?

21 A. We've never felt, outside of the importation of the 5kgs
22 of product, that we've infringed upon any Syngenta patents.

23 Q. And then what does Chris Hayden say in response at the top
24 of the document? What does he say in the first sentence to
25 Mr. Davis?

1 A. He says, "Peter, we may have an issue."

2 Q. And was there then further discussion concerning the
3 possible infringement of Syngenta's azoxystrobin patents with
4 Mr. Hayden?

5 A. Yeah. He goes on to a pretty lengthy discussion of
6 chemistry that's way beyond my knowledge level.

7 **MR. NEUMAN:** May I approach?

8 **THE COURT:** Yes.

9 **MR. NEUMAN:** Defendant's 13.

10 **BY MR. NEUMAN:**

11 Q. You have been handed Defendant's 13 for identification.
12 Do you recognize this document?

13 A. I do.

14 Q. What does it consist of?

15 A. It's an e-mail, again, from Chris Hayden to myself and
16 Peter Davis. It indicates, "Peter, here is a follow-up e-mail.
17 Brian, we need to have a conference call, Chris."

18 Q. Do you recognize the other e-mails on this page as having
19 been sent or received by you on the dates indicated?

20 A. I do.

21 **MR. NEUMAN:** Move to admit Defendant's 13.

22 **MR. LEVINE:** No objection.

23 **THE COURT:** It will be admitted.

24 I missed the date or time frame.

25 **MR. NEUMAN:** April 2nd, 2015 -- April 1st and 2nd,

1 2015.

2 **THE COURT:** Go ahead.

3 **BY MR. NEUMAN:**

4 Q. If you'd look, please, at the first page of this document.

5 Do you see this is -- on April 2nd, 2015, this is an e-mail

6 that you sent Mr. Hayden at 11:43 a.m.?

7 A. I do.

8 Q. And do you see where you say, "I think this is the missing

9 piece you have been looking for"?

10 A. I do.

11 **MR. NEUMAN:** Could you pull that up, please?

12 **BY MR. NEUMAN:**

13 Q. Now, what did you -- what were you referring to when you

14 said this is the missing piece that he's been looking for?

15 A. Well, Mr. Hayden is our expert in this area, as a Ph.D.

16 chemist and an attorney, and I was fully relying upon his

17 freedom to operate opinion for us to make sure that we were not

18 violating any of Syngenta's patents, and he had asked for

19 additional information to the manufacturing process of

20 azoxystrobin. I had requested that through our Mainland China

21 office from Tai He, and this appears to be I'm forwarding

22 additional information on the manufacturing of azoxystrobin to

23 Mr. Hayden.

24 Q. What did you mean by the missing piece?

25 A. I think he needed some clarification on who was carrying

1 out what steps and this, I believe, addresses that, and so I
2 was obtaining information through our Mainland China office
3 that he had sought.

4 Q. So as of this date, after you received this additional
5 information that you are transmitting to Mr. Hayden, as of
6 April 2nd, 2015, what's your understanding as to whether or not
7 Willowood is infringing the Syngenta azoxystrobin patents?

8 A. At this point, I felt that we were not infringing any of
9 Syngenta's patents.

10 Q. Do you see at the very top of the first page of this
11 document Mr. Hayden's response?

12 A. I do.

13 Q. Do you see where he says, "Brian, we need to conference
14 call"?

15 A. Yes, I do.

16 Q. Did you have a subsequent conversation with Mr. Hayden?

17 A. Yes, I did.

18 Q. What was the upshot of that conversation?

19 A. He was very concerned. The information that Sophia had
20 provided did not clearly spell out who carried out
21 etherification and who carried out condensation, and he wanted
22 to discuss that with Peter Davis and myself.

23 Q. And as a result of your conversations with Mr. Hayden, did
24 you do anything further to investigate whether or not
25 Willowood's manufacturing process that was being carried out by

1 Tai He infringed Syngenta's patents?

2 A. Yes, I did.

3 Q. And what was done?

4 A. I immediately contacted Mr. Mundhra. I expressed my
5 concern. He assured me that he would address this personally
6 and not leave it even to our general manager out of our
7 Mainland China office. He flew from Hong Kong to Shanghai, met
8 with SSJ, and physically visited the factories himself.

9 Q. Now, between the time that Willowood filed its
10 application -- thank you. You can take this down -- that
11 Willowood filed its application with the EPA in July 2013 and
12 the spring of 2015, did you and other Willowood representatives
13 ever meet with principals of Tai He?

14 A. Yes, they did. Just myself.

15 Q. Whom did you meet with?

16 A. Mr. Wu, the owner of Tai He.

17 Q. Now, do you speak Chinese?

18 A. I do not.

19 Q. Mandarin?

20 A. No.

21 Q. Does Mr. Wu speak English?

22 A. No.

23 Q. So who else was with you?

24 A. Vijay and SSJ.

25 Q. And on any of those occasions, did you ever ask Mr. Wu

1 what steps he would carry out?

2 A. Absolutely.

3 Q. How many times?

4 A. Multiple. I traveled to China twice a year, March and
5 October, and I had that conversation with him initially,
6 confirmatory in '14 and again in '15.

7 Q. What did he tell you?

8 A. He only carries out the condensation step.

9 Q. Did you ever feel the need to instruct Mr. Wu or anyone
10 else at Tai He how to make azoxystrobin?

11 A. No.

12 Q. Why not?

13 A. They were already making it. What could I tell them?

14 Q. Had they been making azoxystrobin for others to your
15 knowledge before you approached Tai He?

16 A. Yes, they had, for both the domestic Chinese market as
17 well as export markets.

18 Q. Now, I asked you earlier whether Tai He ever provided
19 Willowood with a written process description. Did they?

20 A. Yes, they did.

21 **MR. NEUMAN:** May I approach?

22 **THE COURT:** You may.

23 **MR. NEUMAN:** Defendant's 17.

24 **BY MR. NEUMAN:**

25 Q. You've been handed Defendant's 17 for identification,

1 Mr. Heinze. Do you recognize this document?

2 A. Yes, I do.

3 Q. What is it?

4 A. It's the manufacturing process of azoxystrobin by
5 Yangeheng at Tai He, Mr. Wu's company.

6 Q. And who provided that -- what entity provided that to
7 Willowood?

8 A. Tai He.

9 **MR. NEUMAN:** Move for admission of Defendant's 17.

10 **MR. LEVINE:** Objection. Hearsay, foundation, and
11 also authenticity.

12 **THE COURT:** Overruled. It will be admitted.

13 **MR. NEUMAN:** Permission to publish?

14 **THE COURT:** You may.

15 **BY MR. NEUMAN:**

16 Q. Let's go down to the next page on this document, please,
17 third page. Okay. Stop right there, please.

18 In the bottom half of this page, if you could pull up --
19 see where it says "etherification"?

20 A. I do.

21 Q. That's the beginning of the discussion of the
22 etherification step. Could you scroll down to the next page,
23 please. And at the bottom of the chemical symbols, right
24 there, could you pull up that text?

25 What does that say, Mr. Heinze? What was Tai He saying in

1 this process description?

2 A. Would you like me to read it?

3 Q. Yes, please.

4 A. "The above two-step was processing in the following
5 factory: Lianyungang Jinyang Chemical Company Limited" and
6 then the address.

7 Q. And the above two steps included etherification?

8 A. Can you go back up to that, please? Yes, it appears
9 chlorination and etherification, yes.

10 Q. So that's not Tai He, right?

11 A. It is not.

12 Q. Thank you. You can take that down. Do you recall -- I'd
13 like to switch topics now, Mr. Heinze, talk about toll
14 manufacturing.

15 **THE COURT:** About what?

16 **MR. NEUMAN:** Toll manufacturing.

17 **THE COURT:** Yeah. Go ahead.

18 **BY MR. NEUMAN:**

19 Q. Mr. Heinze, do you recall being questioned yesterday by
20 Mr. Levine concerning a toll manufacturer's slot at AgraForm?

21 A. I do.

22 Q. Do you remember telling Mr. Levine in response to his
23 question that that tolling slot in 2014 was in the summer of
24 2014, which was the slow season?

25 A. I do.

1 Q. So, Mr. Heinze, if Willowood USA had missed that
2 particular tolling slot at AgraForm that was scheduled for July
3 of 2014, what could Willowood have done?

4 A. Rescheduled, slotted another time period.

5 Q. For when?

6 A. That would have been subject to their availability, but at
7 that time of year, they're not very busy.

8 Q. Now, you were asked questions yesterday about Willowood's
9 end use product label for Quadris -- I beg your pardon -- for
10 azoxy 2SC, do you recall?

11 A. I do.

12 Q. And who wrote the labels for Willowood's azoxystrobin
13 products?

14 A. Pyxis Regulatory Consulting.

15 Q. Is that common practice --

16 A. Yes.

17 Q. -- for Willowood?

18 A. Absolutely.

19 Q. To have somebody else write the labels?

20 A. Absolutely.

21 Q. Does Willowood ever write its own product labels?

22 A. No.

23 Q. When you asked Pyxis to write the azoxystrobin end use
24 product labels for Willowood, did you give them a deadline?

25 A. No.

1 Q. Did you ever tell Pyxis to speed up the label writing
2 process, that it was going too slow?

3 A. No.

4 Q. Does Willowood play any role in drafting the labels?

5 A. Not outside of providing the name, picking the color of
6 the front booklet label, no.

7 Q. Do you or anyone at Willowood review any parts of the
8 labels drafted by Pyxis or other consultants before the
9 consultant submits the labels to EPA for approval?

10 A. The only thing we double-check is the crops that are
11 listed on the label. We always want the most comprehensive
12 label available to us, so we do double-check the crops that are
13 listed on the label. But other than that, any of the text, we
14 do not review. We leave that to our regulatory consultants.

15 Q. You don't go over the labels with a fine-toothed comb to
16 inspect all of the language on the labels prepared by your
17 consultants?

18 A. We do not.

19 Q. When did Willowood become aware that the label that was
20 prepared by Pyxis in this case with the word "Syngenta" in one
21 place on that label contained the word "Syngenta" rather than
22 "Willowood"?

23 A. I believe we were contacted by Syngenta. I can't say
24 emphatically.

25 Q. Do you recall roughly when that was, how soon after the

1 labels were submitted to EPA?

2 A. I do not.

3 Q. Once you learned that the label contained the word
4 "Syngenta" rather than "Willowood," did Willowood take any
5 steps?

6 A. Absolutely.

7 Q. What did you do?

8 A. We immediately contacted Pyxis and asked them to correct
9 it and resubmit it to EPA.

10 Q. So what was actually done to correct the label? How does
11 that work?

12 A. I contacted Mike Kellogg, who does all the labels for
13 Pyxis, and let him know that we were very concerned and that --
14 how an oversight like this could occur. And he was very
15 apologetic, made the correction, and resubmitted it to EPA for
16 approval.

17 **MR. NEUMAN:** This might be a good time for a break,
18 obviously at the Court's discretion.

19 **THE COURT:** All right. We'll stop here for the
20 morning recess then. Ladies and gentlemen, I'll excuse you for
21 15 minutes. Please remember not to talk about the case among
22 yourselves or with anyone else, or don't have any contact with
23 anyone. If you do step outside the courthouse, be sure you're
24 back in 15 minutes.

25 All right. The jury is excused for a 15-minute

1 break. If everyone will remain seated while they step out.

2 (Jury excused.)

3 **THE COURT:** You can step down. All right. How much
4 longer do you think you'll be with this witness?

5 **MR. NEUMAN:** Fifteen minutes. Less than a half an
6 hour.

7 **THE COURT:** All right. I think almost all of it has
8 been -- has been related to things covered in direct, I think.
9 So is that what you're -- are you intending to cover everything
10 with him?

11 **MR. NEUMAN:** Most of the remainder of my examination
12 does -- is directly within the scope of his direct. Some of it
13 is not, and -- I think all of it is, actually, and we'll see
14 what they say.

15 **THE COURT:** All right. Well, I mean, I'm usually --
16 if it's just a few questions, usually, it's okay, I think, to
17 go ahead and cover it while the witness is on the stand. If
18 it's going to be a lot, in fairness to Syngenta's timing
19 issues, you know, I'd ask you to do it later. But if it's just
20 a few questions, that's okay.

21 **MR. NEUMAN:** Understood.

22 **THE COURT:** All right? Anything else we need to take
23 up before we take our morning recess? No? All right. We'll
24 be in recess for 15 minutes.

25 (At 10:55 a.m., break taken.)

(At 11:10 a.m., break concluded.)

THE COURT: Anything we need to take up before the jury comes in?

MR. SANTHANAM: Yes, Your Honor. A couple of housekeeping matters that I thought we could resolve quickly before the jury comes back in.

THE COURT: Give me one second. I'm sorry.

(Pause in the proceedings.)

THE COURT: Okay. Go ahead. Pardon me.

MR. SANTHANAM: Right after Mr. Heinze we plan to play back the video deposition designations of Vijay Mundhra and Shen Shaojun, SSJ; and as a part of those designations, we've got exhibits that were part of depositions that we'd like to show. There are some outstanding objections to those, mostly relevance objections, so we would like to clear those up. I believe we can do that pretty quickly, but -- if you would like, for Vijay Mundhra I can list out the Plaintiff's trial exhibits and we have binders prepared with those trial exhibits. I would like to just resolve those objections now so that we can play back the video when the jury gets in.

THE COURT: All right. Did we -- I hate to -- I don't know how long this is going to take. I hate do it while the jury is sitting there waiting.

MR. SANTHANAM: For Shen Shaojun, the exhibits, there are no objections to them.

11 1 **THE COURT:** There are no?

11 2 **MR. SANTHANAM:** There are no objections for SSJ's
11 3 exhibits, but for Vijay Mundhra, there are outstanding
11 4 relevance objections. We would like to get those resolved.

11 5 **THE COURT:** All right. And --

11 6 **MR. TILLER:** If you can just hand it to me real
11 7 quick.

11 8 We might be able to do this -- I just don't remember
11 9 what they are. Give me two seconds.

11 10 **THE COURT:** Sure.

11 11 (Pause in the proceedings.)

11 12 **THE COURT:** So how are you going to show the exhibit
11 13 and the video deposition at the same time?

11 14 **MR. SANTHANAM:** We are going to be able to show the
11 15 exhibit on the screen right next to the video.

11 16 **THE COURT:** Like we're going to try to watch two
11 17 football games at the same time?

11 18 **MR. SANTHANAM:** Well, to be honest, most video
11 19 depositions just have the same picture going so --

11 20 **THE COURT:** Right. Okay.

11 21 **MR. LEVINE:** By the way, Your Honor, in one of the
11 22 video clippings there is a technical glitch, if you will, that
11 23 we can't technologywise eliminate it.

11 24 Do you want to explain it in greater detail?

11 25 **MR. SANTHANAM:** Absolutely. It's in the Vijay

11 1 Mundhra video where there are a couple of two- or three-second
11 2 segments that have feedback in them and so there is no way to
11 3 avoid it.

11 4 **THE COURT:** All right. I'll try to tell the jury, if
11 5 I remember.

11 6 **MR. TILLER:** We'll withdraw.

11 7 **THE COURT:** You'll withdraw those as to Mr. Mundhra?

11 8 **MR. TILLER:** Yes. We'll make it easy.

11 9 **THE COURT:** Good. Thank you.
11 10 We're ready then for the jury?

11 11 **MR. LEVINE:** Yes.

11 12 **THE COURT:** You can bring them in.
11 13 (Jury panel is present.)

11 14 **THE COURT:** Good morning. Ladies and gentlemen, I
11 15 forgot to say yesterday, and then I forgot again this morning,
11 16 we take these regular breaks: One mid-morning, one
11 17 midafternoon; but if I am not taking a break when your morning
11 18 coffee starts talking to you, you know, just raise your hand
11 19 and let me know. This is not an endurance contest, so if we
11 20 need to take an extra break or take the morning or afternoon
11 21 break a little early, that is not a problem. And I apologize
11 22 for not making that clear to you earlier.

11 23 I generally ask that you not bring anything into the
11 24 courtroom to drink because spills happen. However, if any of
11 25 you have, like, an allergy or something going on that you need

11 1 that, just let Ms. Sanders know and we'll see if we can
11 2 accommodate that.

11 3 I believe we are ready. We were still in
11 4 cross-examination. So, Mr. Neuman, you may proceed.

11 5 **MR. NEUMAN:** Thank you, Your Honor.

11 6 **BY MR. NEUMAN:**

11 7 Q. Mr. Heinze, I would like to talk to you for a moment about
11 8 DABCO. Did Willowood representatives ever discuss with Tai He
11 9 whether Tai He used DABCO in the manufacturing process?

11 10 A. Yes, we did.

11 11 Q. When was the first time that that issue was discussed, to
11 12 your recollection, between Willowood and Tai He?

11 13 A. It would have been in 2013.

11 14 Q. And on approximately how many occasions have you discussed
11 15 that issue with Tai He?

11 16 A. Eight or more.

11 17 Q. And what were those discussions? What did you ask and
11 18 what did they say?

11 19 A. We had asked Mr. Wu of Tai He if he used DABCO as part of
11 20 the condensation step in the manufacturing of azoxystrobin
11 21 technical and he indicated no and he said that the DABCO patent
11 22 was still in force in China and hence why he did not use DABCO.

11 23 Q. On how many occasions between 2013 and 2015, after this
11 24 lawsuit was filed, would you say you had that conversation with
11 25 Mr. Wu?

1 A. Each time I traveled to China, so it was twice a year. So
2 I would say six or eight.

3 Q. You testified earlier, in response to Mr. Levine's
4 questions, concerning testing done by JDM. Do you recall that?

5 A. I do.

6 Q. And if I understood your response to Mr. Levine, your
7 initial understanding was that JDM had found DABCO in Tai He's
8 azoxystrobin?

9 A. That is correct.

10 Q. That was your initial understanding?

11 A. That is correct.

12 Q. Have you come to learn differently since that initial
13 understanding?

14 A. Yes, I have.

15 Q. What have you learned?

16 A. That the call on the date needed a purchase for the
17 mass spectrometry, the work to be done -- again, I'm not a
18 chemist -- but, from my recollection, was never purchased.
19 They did do some testing, but none of the samples, whether they
20 were CAC and/or Tai He samples, showed the presence of any
21 DABCO.

22 Q. I would like to turn to another topic now, Mr. Heinze, and
23 that is pricing decisions by Willowood. Do you recall
24 yesterday during your examination by Mr. Levine you were shown
25 a number of e-mails back and forth between you and your

11 1 colleagues at Willowood expressing some disagreement about
11 2 pricing for azoxystrobin? Do you recall?

11 3 A. I do.

11 4 Q. Your colleagues and you sometimes voice disagreements with
11 5 each other concerning the appropriate price at which
11 6 azoxystrobin should be set?

11 7 A. We did.

11 8 Q. Are those sorts of internal discussions and disagreements
11 9 common?

11 10 A. Very common.

11 11 Q. Now, ultimately, as you told Mr. Levine yesterday, you are
11 12 the decider in terms of -- ultimately the decider in terms of
11 13 the price to be charged for Willowood's azoxystrobin products?

11 14 A. Ultimately, yes, I am.

11 15 Q. How does Willowood generally -- how do you go about
11 16 determining where to set Willowood's price to charge customers
11 17 for azoxystrobin product? What factors do you look at?

11 18 A. We work with our distributors to obtain competitive
11 19 pricing -- current competitive pricing levels not only on the
11 20 brand, in this case Syngenta's Quadris, Abound and/or Quilt
11 21 Xcel; and as a generic equivalent, we typically target to be
11 22 somewhere between 5 and 10 percent below the brand, but that is
11 23 dictated sometimes -- you know, our greatest competitor is
11 24 other generic companies like ourselves and those are the
11 25 companies that we have to be competitive with our pricing.

1 So we -- again, we, through competitive intelligence with
2 our customers -- and I want to state that we're a for-profit
3 business. We don't do this to intentionally lower the price of
4 products, but we certainly have to be competitive in the
5 marketplace, so we're sensitive to -- you know, the cost to
6 serve in our business is very high. We have data compensation
7 obligations. We have overheads. We have legal to cover
8 matters like this. We like to extract as much margin as we can
9 out of the marketplace as we possibly can, but we also have to
10 be competitive to drive our sales.

11 Q. And Willowood first began importing azoxystrobin into the
12 United States for commercial sale in July 2014, correct?

13 A. That is correct.

14 Q. Its first sales of azoxystrobin commercially were in July
15 2014, is that right?

16 A. That is correct.

17 Q. What are the primary crops for which azoxystrobin is used?

18 A. A very wide range of crops, but the highest percentage use
19 would be on corn, soybeans, rice, cereals, wheat, barley, oats.

20 Q. When is the growing season for corn?

21 A. Most corn is planted in mid-April and harvested in August,
22 September, October.

23 Q. And when is the growing season for soybeans?

24 A. Similar --

25 Q. Now, when Willowood first --

1 **THE COURT:** I'm sorry. Did you finish your answer?

2 **THE WITNESS:** Similar to that of corn.

3 **BY MR. NEUMAN:**

4 Q. When Willowood first sold its azoxystrobin product in July
5 2014, to your knowledge, were any of those sales for corn?

6 A. They were not.

7 Q. What were they for?

8 A. Predominantly rice in northern California. The corn and
9 soybean market was already over or the majority of it was
10 over -- already over.

11 Q. Now, you testified a moment ago that in setting prices
12 Willowood looks at the branded price and also any generic
13 competition that's out there. When Willowood entered the
14 azoxystrobin market in the summer of 2014, were there any other
15 generics in the market selling azoxystrobin products?

16 A. Yes, there were.

17 Q. Who was that?

18 A. Cheminova.

19 Q. So when Willowood was deciding what price to set its
20 product -- what price to set for selling its azoxystrobin
21 products in the summer of 2014, whose pricing was it looking at
22 to be competitive in the marketplace?

23 A. Primarily that of Cheminova.

24 Q. And then in the fall of 2014, Willowood sold additional
25 azoxystrobin, right?

1 A. Yes, we did.

2 Q. At that time whose pricing was Willowood primarily looking
3 at in determining where to set its price?

4 A. Also Cheminova.

5 Q. And in the spring of 2015 when Willowood was selling
6 product, whose generic pricing was it looking at to set its
7 price?

8 A. Again Cheminova and another generic competitor, Albaugh,
9 had also entered the market.

10 Q. To your knowledge, did Willowood sell any azoxystrobin in
11 the summer of 2014 for purposes of the 2014 corn or soybean
12 growing season?

13 A. We did not. As I mentioned, that season had pretty well
14 concluded by the time we had received our registration and
15 imported and formulated product.

16 Q. You testified -- I would like to switch topics for a
17 moment, if I may. You testified earlier about the relative
18 roles of Willowood USA and Willowood Limited in the logistics
19 of shipments of azoxystrobin into the United States when
20 Willowood USA purchases azoxystrobin from Willowood Limited. I
21 would like to ask you are the arrangements that you described
22 and the relevant roles that you described earlier the way it's
23 always done with regard to azoxystrobin imports?

24 A. I'm sorry. I'm not sure I understand the question.

25 Q. Do you recall you testified about the relative roles, who

1 does what, in terms of the importation of product --

2 azoxystrobin product into the United States? Is that the way

3 it's always done with respect to azoxystrobin?

4 A. Yes, it is.

5 Q. And were those -- the arrangements that you talked about

6 earlier and the relative roles, did that also apply to the

7 importation of the 5 kilograms of azoxystrobin in 2013?

8 A. Yes. Yes, it did.

9 Q. You mentioned earlier, Mr. Heinze, that Willowood began by

10 selling herbicides and then moved -- began adding fungicides to

11 its portfolio. Do you recall that?

12 A. Yes, I do.

13 Q. Now, in your experience, do the markets for fungicides

14 like azoxystrobin and herbicides like mesotrione differ in any

15 notable ways?

16 A. Absolutely.

17 Q. Could you explain what, in your experience, are the

18 differences?

19 A. A product like mesotrione, which is a corn herbicide, is

20 applied prophylactically or preventative to a crop. The first

21 thing a grower is going to determine is what crop am I going to

22 plant, and the first thing he needs to be concerned about is

23 not only the variety of seed that he needs to be planting, but

24 the weeds that need to be controlled.

25 The reason weeds need to be controlled is that they

1 compete for moisture and nutrients. Fertilizer is very
2 expensive and you don't want weeds consuming your soil moisture
3 in -- particularly in the Midwest where there is no irrigation
4 and you are dependent upon rainfall for moisture for the crop.
5 So it's a very predictable use pattern. Growers will almost
6 emphatically apply a pre-emergent or a post-emergent herbicide
7 to a crop.

8 Whereas, a fungicide or insecticide, depending upon
9 the growing conditions, commodity prices, things of that
10 nature, make a determination whether or not it is -- is disease
11 present, are insects present and make a determination if they
12 are going to spray or not spray.

13 So herbicides are very predictable. Insecticides,
14 fungicides are not near as predictable.

15 Q. In your experience selling products in the market, do
16 farmers prioritize between herbicides and fungicides?

17 A. Absolutely.

18 Q. How so?

19 A. Again, they are going to control the weeds lock, stock,
20 and barrel. It's the first thing that -- outside of planting
21 the crop, that has to be addressed is controlling weeds and
22 then your other inputs you take on an as-come basis. Does
23 insect pressure present itself? Yes, I need to spray an
24 insecticide. Does disease present itself? Yes, I need to
25 control disease in my crop. So weeds are addressed

1 preventatively. Fungicides and insecticides are addressed on
2 an as-need basis.

3 Q. In your experience, do farmers' purchasing decisions
4 concerning fungicides and herbicides differ in terms of price
5 sensitivity?

6 A. Absolutely.

7 Q. Could you explain that to the jury?

8 A. Yes. I mean, you're going to spend the money for a
9 herbicide. You absolutely have to control the weeds in your
10 crop or the -- as it was mentioned yesterday, weeds can overrun
11 a crop. They literally can choke out and kill a crop and out
12 compete it, so you're going to spend the money on a herbicide
13 or multiple herbicides.

14 And then as far as fungicides and insecticides, you make
15 an economic determination whether or not you think that you're
16 going to get a yield enhancement benefit from controlling
17 disease and/or insects, so they're --

18 Q. So -- I'm sorry.

19 A. -- definitely independent of one another.

20 Q. I'm sorry, I didn't mean to step on your answer.

21 A. No problem.

22 Q. So all of this being equal, if prices go up on herbicides
23 and fungicides, in your experience, are farmers more likely to
24 cut back on the purchase of one rather than the other?

25 A. Yes.

1 Q. Explain, please.

2 A. They'd be more likely to cut back on a fungicide, because
3 it's not an absolute requirement, unless there's extreme
4 disease pressure, but you cannot afford not to control the
5 weeds in your crop.

6 Q. And when times are tough for farmers, and they can't get
7 as much for their corn and wheat and other commodities, in your
8 experience in the market, does that have a bigger impact on
9 either their -- on purchasing either fungicides or herbicides?

10 A. Absolutely.

11 Q. How so?

12 A. Again, a farmer -- an input you can't skip is a herbicide.
13 You have to have a herbicide to control your weeds. Commodity
14 prices are low, you have disease pressure is low, you may very
15 well skip -- and insect pressure is low, you may very well skip
16 a fungicide and/or an insecticide application.

17 Q. You mentioned earlier that Willowood has to look
18 to -- that you're mainly competing against generics, once
19 generic are in the market. Why is that?

20 A. Due to loyalty programs of multinational companies, such
21 as Syngenta, in the marketplace with large distributors.

22 Q. Could you explain that for the jury so they have a better
23 understanding of what that involves and what kind of an effect
24 that has on a generic like Willowood?

25 A. Yes. Multinational companies are companies such as

1 Syngenta and Bayer and Dow and DuPont, research and development
2 based companies. They have strong relationships with national
3 scope distributors. I know these names will probably mean
4 nothing, but Crop Production Services, Helena Chemical, Tenkoz,
5 Wilbur-Ellis, Simplot are large national scope distributors and
6 with hundreds of retail outlets.

7 And the multinational companies, while they have products
8 under patent, offer rebates to these companies, substantial
9 rebates, and when products come into a post-patent environment,
10 in this case azoxystrobin, multinational companies limit the
11 amount of market share that they're willing to give to
12 generics.

13 So in the case of Crop Production Services or Helena, they
14 have to maintain a certain percentage, usually a very high
15 percentage, 90 percent of their buying purchases from a
16 company, such as Syngenta, to maintain the rebates that they
17 had had while the product was under patent protection. So that
18 leaves very limited market share access for Willowood and other
19 generics to participate in. I hope that explains.

20 Q. Thank you. Mr. Heinze, we've been discussing Willowood's
21 azoxystrobin products Azoxy 2SC and AzoxyProp Xtra. What
22 Syngenta products are those similar to in terms of active
23 ingredient and concentrations?

24 A. They would be identical to -- Azoxy 2SC would be identical
25 to that of Quadris and Abound, and it would be identical on a

1 percentage basis of that of Quilt Xcel. AzoxyProp Xtra would
2 be that of Quilt Xcel.

3 Q. And what does AzoxyProp Xtra contain in terms of active
4 ingredients?

5 A. Azoxystrobin and another fungicide called propiconazole.

6 Q. Does Willowood make any product that contains azoxystrobin
7 plus an active ingredient known as difenoconazole?

8 A. We do not.

9 Q. Does Willowood make any azoxystrobin product that also
10 contains an active ingredient known as Solatenol?

11 A. We do not.

12 **MR. NEUMAN:** May I have a moment, Your Honor?

13 **THE COURT:** Yes.

14 **MR. NEUMAN:** No further questions, pass the witness.

15 **THE COURT:** Redirect.

16 **REDIRECT EXAMINATION**

17 **BY MR. LEVINE:**

18 Q. Couple of quick questions about what you just were talking
19 about, these multinational corporations. Pinnacle is one of
20 those multinational corporations, correct?

21 A. They're a distributor. They're not a manufacturer.

22 Q. And Willowood now sells to a company called Innvictis,
23 which is a part of Pinnacle?

24 A. We do.

25 Q. Pinnacle has basically gone generic to the generic for

1 sources of its products now, correct?

2 A. On some of their products, yes.

3 Q. If you'll turn to Plaintiff's Exhibit 14 in your notebook.
4 This was one of the exhibits that Mr. Neuman used with you.

5 And, David, if you could please pull up the first page and
6 highlight it, the top section. I just want to make sure we're
7 all on the same page, no pun intended.

8 **BY MR. LEVINE:**

9 Q. You see there that Willowood Limited is identified as the
10 seller?

11 A. Correct.

12 **MR. LEVINE:** Can you highlight that, David?

13 **BY MR. LEVINE:**

14 Q. And Willowood USA is identified on the far right -- David,
15 it says seller and buyer -- so Willowood USA is the buyer,
16 Willowood Limited is the seller, correct?

17 A. Correct.

18 **MR. LEVINE:** Okay. Please turn to the third page,
19 which is Section 8. And, David, if you can please blow that up
20 for the jury. Thank you.

21 **BY MR. LEVINE:**

22 Q. It states that, "Seller agrees to deliver the products
23 FOB, the place of destination designated by buyer," correct?

24 A. Yes, it does.

25 Q. Right. And Willowood USA designates the place to where

1 Willowood Limited should ship the products, correct?

2 A. Correct.

3 **MR. LEVINE:** David, if you could please pull up what
4 the witness was shown as Defendant's Exhibit 16, and if you
5 could highlight in the middle of the left column.

6 **BY MR. LEVINE:**

7 Q. There is a row that I believe says "airport departure" and
8 the location for the departure from where Willowood Limited
9 ships the azoxy is Hong Kong, correct?

10 A. That is correct.

11 Q. And then right below that the box states "airport of
12 destination" and the airport of destination is Memphis,
13 correct?

14 A. Correct.

15 Q. In the United States, correct?

16 A. Correct.

17 Q. Now, Mr. Heinze, in response to some of the questions from
18 Mr. Neuman, you testified that you could have done the
19 formulation development and the sample creation and the testing
20 outside of the US. Do you recall that testimony?

21 A. I do.

22 Q. Right. But we all know, of course, that you did not do it
23 offshore, you did it here in the US, correct?

24 A. That is correct.

25 Q. And you had testified that once you found out about what

11 1 you referred to as a mistake, that, well, the damage was done
11 2 was the essence of your testimony, correct?

11 3 A. That's correct.

11 4 Q. Now, it's true, isn't it, that you could have withdrawn
11 5 the EPA applications that you had already submitted, correct?

11 6 A. We could have.

11 7 Q. And you could have done the testing offshore, correct?

11 8 A. We could have.

11 9 Q. And you could have created the formulations offshore,
11 10 correct?

11 11 A. Correct.

11 12 Q. And you could have done the testing of the samples that
11 13 were created offshore, correct?

11 14 A. Correct.

11 15 Q. And you could have then resubmitted your EPA applications,
11 16 correct?

11 17 A. Correct, but that still would not have -- the product was
11 18 in country. It would still have been an infringement.

11 19 Q. If all of that testing and samples and resubmission to the
11 20 EPA had been done after the compound patents expired, it would
11 21 not have infringed the compound patents, correct?

11 22 A. It still doesn't mean that the 5 kilograms had not entered
11 23 the country.

11 24 Q. Right. I realize that. All right. Let's move on,
11 25 Mr. Heinze.

1 **MR. LEVINE:** If you could -- David, if you could
2 please pull up Exhibit 53 that -- Defendant's Exhibit 53.

3 **BY MR. LEVINE:**

4 Q. This was the opinion, one of the opinion letters that
5 counsel spoke to you about from Mr. Hayden.

6 **MR. LEVINE:** And, David, if you can please highlight
7 the "RE" line, the subject line of this letter.

8 **BY MR. LEVINE:**

9 Q. The "RE" line makes reference to the '138 patent and then
10 the two compound patents, the '250 and the '076, correct?

11 A. Correct.

12 Q. So the subject of this letter dealt with the '138 patent
13 and the two compound patents, correct?

14 A. Correct.

15 **MR. NEUMAN:** Objection.

16 **MR. LEVINE:** David, if you'll --

17 **THE COURT:** I'm sorry, what? What?

18 **MR. NEUMAN:** Objection, foundation. The "RE" line.

19 **THE COURT:** Does it say -- I don't understand your
20 objection. Are you saying he's not --

21 **MR. NEUMAN:** The "RE" line refers to '250, which is
22 not a compound patent.

23 **THE COURT:** Is that right?

24 **MR. LEVINE:** Yeah. '256 is the compound --

25 **THE COURT:** Okay. So --

11 1 **MR. LEVINE:** -- so I'll rephrase the question.

11 2 **THE COURT:** Thank you.

11 3 **BY MR. LEVINE:**

11 4 Q. Mr. Heinze, if you'll turn, or David, to the second page
11 5 with respect to the '076 patent. Do you see the heading that
11 6 says, the second patent is the '076 patent, one of the compound
11 7 patents?

11 8 A. I do.

11 9 Q. And then it's redacted out is the term that we will use.
11 10 The point I want to establish and make sure it's clear is that
11 11 you're not relying on any advice from Mr. Hayden with respect
11 12 to the compound patents, are you?

11 13 A. We are.

11 14 Q. Not here in this proceeding, because it's all blacked out,
11 15 correct?

11 16 A. Evidently so.

11 17 Q. Right. And there's nothing in Defendant's Exhibit 53 with
11 18 respect to the DABCO patent, correct?

11 19 A. I can't say that with any certainty. Would you like to
11 20 show it to me or --

11 21 Q. There's nothing to show you, Mr. Heinze, so I can't.

11 22 **THE COURT:** Well, he's got the letter right there.

11 23 **MR. LEVINE:** If you want to flip through, we can go
11 24 page by page.

11 25 **THE COURT:** If you want -- do you still have the

1 exhibits there? You can look at Defendant's 53. If you don't,
2 somebody --

3 **THE WITNESS:** Well, I'm taking it at face value that
4 he's saying that this opinion does not rely on a DABCO.

5 **MR. LEVINE:** And, David, if you'll please pull up
6 Defendant's Exhibit 10.

7 **BY MR. LEVINE:**

8 Q. And, again, the "RE" line in Defendant's Exhibit 10, the
9 July 2014 opinion, makes reference only to the '138 patent,
10 correct.

11 A. That is correct.

12 Q. And to the best of your knowledge, this July 2014 opinion
13 does not address at all the DABCO patent, correct?

14 A. Correct. And the two compound patents that expired by
15 this point, so they weren't relevant. It.

16 **MR. LEVINE:** Nothing further, Your Honor.

17 **THE COURT:** Anything else for the defendant?

18 **MR. NEUMAN:** Nothing further.

19 **THE COURT:** All right. Thank you. You may step
20 down.

21 All right. You can call your next witness.

22 **MR. SANTHANAM:** Yes, Your Honor. Plaintiffs call
23 Shen Shaojun, also known as SSJ, and it's going to be played
24 back through a deposition designation, and at this time we move
25 for the admission of Plaintiff's Trial Exhibits 31 and 32.

11 1 **THE COURT:** Those are the documents referenced in the
11 2 testimony?

11 3 **MR. SANTHANAM:** That is correct.

11 4 **THE COURT:** Thirty-one and 32, is that what you said?

11 5 **MR. SANTHANAM:** That is correct.

11 6 **THE COURT:** Sorry, my hearing's having trouble
11 7 catching up. No objection to those, correct?

11 8 **MR. NEUMAN:** Correct.

11 9 **THE COURT:** They'll be admitted.

11 10 All right. So, ladies and gentlemen, depositions --
11 11 and I think you might have actually seen a little snippet from
11 12 a deposition with one of the other witnesses, but before the
11 13 trial gets started, the lawyers and parties are allowed to take
11 14 testimony under oath from the various witnesses, and sometimes
11 15 witnesses, for whatever reason, don't come to court. They're
11 16 outside the subpoena power, such as somebody outside the
11 17 country or another reason, so their testimony is offered to you
11 18 by way of a recorded deposition.

11 19 These depositions are given under oath. Lawyers for
11 20 both parties are there and can ask questions, and so to the
11 21 extent possible, you should receive this testimony just as if
11 22 the witness was sitting in the witness box instead of showing
11 23 up on the video screen. Okay.

11 24 **MR. SANTHANAM:** And, Your Honor, we have courtesy
11 25 binders for the SSJ deposition, if I may approach.

1 **THE COURT:** You may. And just also, we're not --
2 they're not playing the entire deposition, just the relevant
3 parts, so if you see any little choppy things, that because
4 they've cleaned out the things that don't -- you know, that
5 aren't necessary for your decision.

6 **MR. SANTHAHAM:** One other point, Your Honor, there
7 is -- there may be some portions that are interpreted, so we
8 wanted to bring that to the Court's attention.

9 **THE COURT:** Oh, okay. You had an interpreter for
10 this deposition?

11 **MR. SANTHANAM:** That's correct.

12 **THE COURT:** Okay. You'll see how it works.

13 (Video of Shen Shaojun was played.)

14 **THE COURT:** All right.

15 **MR. SANTHANAM:** Yes, Your Honor, two clarifications
16 we would like to make on the record. There were two documents
17 referenced. It was referenced as Defendant's Deposition
18 Exhibits 74 and 75. Those have been added into evidence as
19 Plaintiff's Trial Exhibits 31 and 32 respectively.

20 **THE COURT:** Okay. So the Deposition Exhibit 74 is
21 Plaintiff's Exhibit 31, and --

22 **MR. SANTHANAM:** 75 is 32.

23 **THE COURT:** All right.

24 **MR. SANTHANAM:** At this point, we call Vijay Mundhra
25 of Willowood Limited, and, again, this will be through a

1 deposition designation.

2 **THE COURT:** Okay. So Mr. Mundhra is also going to
3 testify by deposition, and you should take it -- his testimony
4 as if he were present in the courtroom, to the extent that you
5 can. You should give that your best shot and every effort.

6 **MR. SANTHANAM:** And before we do that, Your Honor,
7 two points. We would like to move for the admission of
8 Plaintiff's Trial Exhibits 21, 25, 54, 55, 56, and 57, and
9 these were discussed earlier today.

10 **THE COURT:** I think there's no objection?

11 **MR. TILLER:** As long as they are the same ones that
12 were in the book.

13 **MR. SANTHANAM:** And to provide clarification, 21 is
14 referred to as Deposition Exhibit 16, 25 is referred to as
15 Deposition Exhibit 65, 54 is referred to as Deposition Exhibit
16 78, 55 is referred to as Deposition Exhibit 79, 56 is referred
17 to as Deposition Exhibit 80, and, lastly, 57 is referred to as
18 Deposition Exhibit 81.

19 And we would like to remind the Court one more time
20 that there is a technical glitch with this video. We had a
21 little bit of feedback and the volume does go up for a couple
22 of seconds in a couple instances.

23 **THE COURT:** We'll try to be tolerant. Go ahead.

24 (Video of Vijay Mundhra was played.)

25 **THE COURT:** All right. I think we'll go on to lunch

1 before we start another witness.

2 **MR. SANTHANAM:** Yes, Your Honor.

3 **THE COURT:** So it's just a hair early, but we'll make
4 it up this afternoon. So, ladies and gentlemen, I would
5 suggest to you, based on sitting in this place for quite a
6 number of years, that if you eat too much at lunch, you might
7 get sleepy afterwards, so -- particularly on a rainy day. So I
8 just suggest to you that you eat a light lunch and that
9 you -- I know it's raining, but stretch your legs, walk around,
10 get a little exercise and a little bit of movement.

11 And if, at any time after lunch today or anytime,
12 really, you say, uh-oh, I kind of need to stand up, you know,
13 just let me know. It's okay. And we'd be glad to stand up
14 between witnesses or whatever we need to do to be sure that
15 we're all staying alert. I know yesterday, when I told you
16 about our court schedule, some of you probably said, well, why
17 aren't our days longer, we could probably get done earlier if
18 the days were longer. But I think you're probably appreciating
19 now just how much work it is to give the case your attention.
20 So just let me know anytime you need to stand up.

21 So, over the lunch break, don't talk about the case
22 with yourselves or anyone else. Don't have any contact with
23 the lawyers, parties, or witnesses. Don't look anything up on
24 the internet or consult any outside sources, and don't form an
25 opinion. Even though, you know, you've started to hear -- hear

1 the evidence now, a good bit of the evidence, keep an open
2 mind.

3 We will start back in an hour and 15 minutes, so that
4 will be 20 and minutes to two. The jury is excused. Leave
5 your notes in your chair, and come back at 20 minutes till two.

6 (At 12:25 p.m., jury excused.)

7 **THE COURT:** And I believe the plaintiff did move
8 admission of those exhibits used in his deposition, and I meant
9 to admit them. I may have not have said that clearly for the
10 clerk. So that's Plaintiff's 21, 25, 54, 55, 56, and 57. And
11 those are admitted.

12 And I meant to do this before the jury left. There
13 was also reference in the testimony of Mr. Mundhra to
14 Deposition Exhibit 63, which I think has already been admitted
15 as Plaintiff's Exhibit 17. Is that right?

16 **MR. SANTHANAM:** Sixty-three, I believe -- I think it
17 was admitted as Defendant's.

18 **THE COURT:** Defendant's?

19 **MR. NEUMAN:** That's correct.

20 **THE COURT:** Defendant's Exhibit 17. Thank you. I
21 saw it had a sticker on it with 17. All right. Now, what's
22 coming after lunch?

23 **MR. LEVINE:** Your Honor, we'll be -- Plaintiff's
24 calling Jeff Cecil.

25 **THE COURT:** Okay. And then, I believe you told me

12 1 yesterday --

12 2 **MR. LEVINE:** After Mr. Cecil will be Mr. Fisher and
12 3 Mr. Wichert.

12 4 **THE COURT:** Okay. And you anticipate them being
12 5 shorter from Mr. Heinze from your end?

12 6 **MR. LEVINE:** I'm not sure we'll get all the way
12 7 through Mr. Wichert by the end of the day today.

12 8 **THE COURT:** All right. Okay. And are you calling
12 9 Dr. Fortunak? Is he --

12 10 **MR. LEVINE:** Not during our case in chief.

12 11 **THE COURT:** All right. Okay. I'm just trying to get
12 12 organized on how all of that comes in. All right. Anything
12 13 else before we take our lunch recess?

12 14 **MR. LEVINE:** Briefly. Yesterday, you had given us
12 15 what you referred to as Draft No. 1 of the verdict sheet.
12 16 We've taken a look at it. We do have some objections to it but
12 17 we tried to address them. I've got a red line, which I can
12 18 hand to you and provide to counsel.

12 19 **THE COURT:** That's fine. You know, obviously, we
12 20 need to work through that.

12 21 **MR. LEVINE:** I just wanted to --

12 22 **THE COURT:** Yeah. I've looked at it again, and, you
12 23 know, kind of have some second thoughts myself about some of
12 24 the changes, so it's clearly a draft.

12 25 **MR. LEVINE:** We took the liberty of watermarking it

as Draft No. 2.

THE COURT: All right.

MR. LEVINE: And you had marked it as Draft No. 1.

And if you'd like, we can e-mail this to Ms. Sanders.

THE COURT: I'll take a look at it and let you know if I need that.

MR. LEVINE: Thank you.

THE COURT: I did double-check. I have Word copies of your jury instructions. The plaintiff submitted revised ones, which I saw, and then Willowood's back, what, six weeks ago, something like that? Yeah. So I've got that. Anything else before we go to lunch? No? All right. We'll be in recess till 1:40.

(At 12:27 p.m., break taken.)

(At 1:40 p.m., break concluded.)

THE COURT: Good afternoon. I think we are ready. Is there anything that we need to take up before the jury comes in? No.

All right. You can bring the jury in.

I'm going to try to remember to have the jury stand up between the witnesses. This rain, very dreary out there. I think that might help us all. If I forget, somebody can give me a clue.

(Jury panel is he present.)

THE COURT: Good afternoon. We are ready to proceed

1 and the Plaintiff may call its next witness.

2 **MR. COUGHLIN:** Your Honor, Mr. Jeff Cecil.

3 JEFF CECIL,

4 PLAINTIFF'S WITNESS, SWORN AT 1:42 p.m.

5 DIRECT EXAMINATION

6 **THE COURT:** Go ahead.

7 **MR. COUGHLIN:** Thank you, Your Honor.

8 **BY MR. COUGHLIN:**

9 Q. Mr. Cecil, can you please introduce yourself?

10 A. Yes. I'm Jeff Cecil. I'm the head of marketing for
11 Syngenta Crop Protection here in North Carolina.

12 Q. Where do you live, sir?

13 A. I live in Greensboro. Actually Summerfield, just north of
14 Greensboro.

15 Q. How long have you lived in Greensboro?

16 A. I moved here in 2005.

17 Q. You indicate your current position with Syngenta is head
18 of marketing, is that correct?

19 A. Yes, it is.

20 Q. You mentioned -- you said in North Carolina. Is that head
21 of marketing just in North Carolina?

22 A. No. It's for North America.

23 Q. Is the crop protection department for North America here
24 in Greensboro?

25 A. That's correct.

1 Q. We'll talk about that position in a minute. If you could
2 let me know or explain how long you've been with the company.

3 A. I've been with Syngenta and/or its preceding companies for
4 22 years. I joined -- actually, it was Ciba-Geigy when I
5 joined the company. It then merged in with Novartis and then
6 to Syngenta in 2000. We've been Syngenta ever since. 22 years
7 total.

8 Q. Can you tell us a little bit about your background, what
9 you did in life before you came to work for Syngenta?

10 A. Sure. I grew up on a family farm in Kentucky. I was in
11 western Kentucky, Owensboro area, and we had a small family
12 farm, about 1,200 acres of corn, soybeans, tobacco, that I grew
13 up on. I had the opportunity to farm for myself for a couple
14 of years after I went to school in a small university, Murray
15 State University, in Kentucky and had the opportunity to farm
16 for a few years, decided that wasn't really for me. I got the
17 opportunity then to still work with farmers and joined Syngenta
18 or Ciba-Geigy then.

19 Q. What did you study? You indicated you went to college.
20 Murray State University?

21 A. That's correct. I went to Murray State to study business
22 management and got a four-year degree in business management.

23 Q. In what year did you graduate?

24 A. 1993.

25 Q. Is that when you then -- did you return to your family

13 1 farm?

13 2 A. I did. I farmed while I was in school. I -- actually, my
13 3 father took a job off the farm when I was a senior in high
13 4 school and he asked me to run the farm in his absence, so I
13 5 took it on while I was in school and farmed through school and
13 6 then two years after actually.

13 7 Q. What led you to come to work for Syngenta?

13 8 A. Yes. So I met the local sales representative there in
13 9 Kentucky when I was farming and got to be pretty good friends
13 10 with him. He asked me to interview at one point. As I said, I
13 11 wasn't really feeling successful as a farmer at the time, so I
13 12 decided that I wanted to something a little different for my
13 13 family and we decided that was the right move for me.

13 14 Q. And what position did you start with?

13 15 A. I started as a sales representative in southern Ohio. I
13 16 had a small sales territory in southern Ohio where I got to
13 17 work with farmers, which was really appealing to me at the time
13 18 because I could still stay with my roots and be on the farm
13 19 every day talking to farmers and doing what I liked do.

13 20 Q. Where were you located at that point in time?

13 21 A. I lived in Dayton, Ohio. I had six counties surrounding
13 22 the city of Dayton, Ohio, so that was my stay there.

13 23 Q. What type of products were you selling or representing?

13 24 A. I sold crop-protection products, crop protection being the
13 25 products that are used to protect farm inputs, basically. Once

1 the seed is put into the soil, those products are used to
2 protect the crop to make sure that the farmer can get the
3 maximum yield out of the seed.

4 Q. Can you briefly go through the various positions you've
5 held at Syngenta since you started? I guess after you were a
6 sales representative.

7 A. Sure. So I started as a sale representative. I moved
8 into a technical sales manager in Minnesota, South Dakota for a
9 couple of years and then went to Des Moines, Iowa, where I was
10 a district sales manager, had my first team that reported to me
11 then in Iowa. Then I moved -- when we merged to become
12 Syngenta, I had the opportunity to move back to Ohio and took
13 on the district manager position in Ohio, Michigan.

14 After that I had the opportunity to move to
15 Greensboro to take on a marketing role as a crop manager for
16 citrus and vegetables and where I -- my first marketing role to
17 really look at what it meant beyond corn and soybeans, so to
18 speak; and then after that I was a brand manager, which we now
19 call a product lead in the current environment, which was
20 really responsible for specific products, making sure that our
21 marketing campaigns were put together properly. After that
22 position, I had the chance to be a global brand manager and a
23 lead for our Seedcare business where I was able to lead a
24 global business and understand, you know, what it meant to go
25 beyond North Carolina, so to speak, and so that was five years

1 there. Then I came back to this position in crop protection
2 three years ago.

3 Q. Can you explain, please, or describe your responsibilities
4 as head of marketing for crop protection?

5 A. Yeah. So as the head of marketing, I'm responsible for
6 leading the strategy for our overall business with specific
7 marketing campaigns, really looking at pricing, looking at the
8 strategy of a product, how long it will last, what we can do
9 with it, how we position it, and leading a team. So I have a
10 team of people that work with me to do all the things that I
11 described that look at how they manage specific products within
12 our portfolio.

13 Q. Approximately how many people work with you or for you on
14 the team you described?

15 A. Within my team, I have 69 total people. I have eight
16 direct reports that report to me here in Greensboro.

17 Q. And what type of products fall within that in terms of
18 crop protection?

19 A. So I'm responsible for all of crop protection, so that
20 means that the herbicide products fall within my area,
21 fungicide products for disease control, insecticide products
22 for insect control, and then seed treatments.

23 **THE COURT:** What did you say, the last thing?

24 **THE WITNESS:** Seed treatments.
25

1 **BY MR. COUGHLIN:**

2 Q. Where is most of your team located?

3 A. My team is, all about five, located right here in
4 Greensboro. I have five that are out in the field in different
5 capacities.

6 Q. Can you describe generally the management structure or any
7 type of committees that are involved with leading crop
8 protection?

9 A. Yeah. So I sit on various committees, as you can imagine,
10 being head of marketing, but I guess the biggest ones are our
11 Crop Protection Leadership Team that I sit on, which was
12 formally -- in some of the documents I know it's referred to as
13 our Regional Operating Committee or ROC. I sit on our Central
14 Steering Committee, which is our -- more of our weekly sales
15 operations type of meeting.

16 Q. Can you describe the general functions of those two
17 committees?

18 A. Yeah. So the Crop Protection Leadership Team is really
19 based on a three- to five-year horizon, so it is really looking
20 at our business a little further out, understanding how we need
21 to structure the business overall to drive the strategy
22 long-term.

23 Our Central Steering Committee is really looking at the
24 day-to-day, so once a week we get together and we talk about
25 what's happening in the field, what we need to be doing

1 differently to respond to the specific challenges of the year.

2 Q. How many people serve on these respective committees?

3 A. So on the Crop Protection Leadership Team, there is ten
4 people, I think; and that is the regional director, who I
5 report to, and his direct reports that are on that team.

6 Then the Central Steering Committee is a much larger
7 group. It's about 20 people. It includes our Commercial Unit,
8 so that would be the people that are in the field that are
9 managing the day-to-day business out there, that sit on the
10 team as well.

11 Q. Do you have any other roles at Syngenta or any additional
12 involvement in Syngenta?

13 A. Yeah, I certainly have lots of other roles. I won't list
14 them all, but, you know, in addition to that, I do lots of work
15 to get involved in the community at large and there's -- as you
16 get higher in the company, obviously you want to be more
17 involved in the things going on around you, so things like
18 United Way and the Crop Walk that we host here. All of those
19 kind of things we get to serve on -- I get to serve on from
20 time to time.

21 Q. I would like to talk about Syngenta Crop Protection as a
22 company. Can you describe the company and what the purpose of
23 the company is, the mission?

24 A. Yeah. So I think, you know, we have a mission of really
25 doing more with less, of making sure that we're selling

1 products that benefit the farm; and really we're all about
2 making sure that we're on the farm, understanding the needs of
3 the farm, and answering the needs that the farmer has.

4 What we really strive for is making sure that we're, you
5 know, in touch with the realities of what's going on in
6 agriculture today, so that's really what we are striving to do
7 and we do that through our crop protection line and being able
8 to answer the needs on a daily basis with what the crop is
9 going through, what the different conditions are, and what
10 products they need.

11 Q. How long has Syngenta been in business?

12 A. A long time. So Syngenta was formed in 2000 as a merger
13 of AstraZeneca and Novartis. They spun off their ag divisions
14 and formed Syngenta. As I said earlier, though, that was --
15 there was lots that happened before that. So Novartis was
16 before that. Ciba-Geigy was before that. Ciba and Geigy were
17 both before that. Those were well back into the 1800s, so
18 long-standing business.

19 Q. How long has it had a presence here or has the facility
20 been here in Greensboro?

21 A. The facility we're in now was 1972 or '3, if I remember
22 right, so it's quite a long time.

23 Q. Do you have other offices in North Carolina?

24 A. Yeah, we have several. We have about 700 people on site
25 here in Greensboro. We have maybe 450 or so over in Raleigh at

1 our research station over there. We have a couple of other
2 smaller sites around the state that we have people at.

3 Q. Can you describe in perhaps a little more detail the
4 products that Syngenta manufactures, develops, and sells?

5 A. All right. So as I said, we have our herbicide group.
6 Herbicides are designed to protect the crop from weeds. So
7 weeds are a major challenge for the farm. They obviously have
8 to treat for weeds and herbicides is what they treat with.

9 Fungicides would be the control of diseases. We look at
10 how we can control diseases in different ways. There is many
11 different diseases that attack a crop through the growing
12 season and being able to address that through fungicides.

13 Insecticides, obviously, as you go across the
14 country, you see insecticides more or less depending on where
15 you are. There is a big push for insecticides to control those
16 pests.

17 And then our seed treatments are really a combination
18 of fungicides and insecticides used directly on the seed to
19 control things in the very early stages of crop development.

20 Q. Let's talk a little bit about the seed treatment you
21 described. How do your products -- how are they integrated
22 with seeds? The other -- I think the way you described the
23 insecticides or the pesticides, et cetera, have been on crops.

24 A. Correct.

25 Q. Seed treatment before crops are planted?

1 A. Right. So it would be treated on the seed before it
2 actually goes into a bag and delivered to the farm so that it
3 can be planted in the ground and used that way directly on the
4 seed in one application. The crop-protection products are,
5 generally speaking, a foliar application of the product over
6 top of a crop.

7 **THE COURT:** Foliar being like leaves, foliage?

8 **THE WITNESS:** Yeah.

9 **THE COURT:** Okay.

10 **THE WITNESS:** Foliar being foliage after the --
11 there's lots of different ways, but generally a broadcast
12 application across the field.

13 **THE COURT:** I was just making sure I understood the
14 word.

15 **THE WITNESS:** Yeah. I'm sorry.

16 **THE COURT:** That's all right.

17 **BY MR. COUGHLIN:**

18 Q. In the Crop Protection Leadership Team and the Central
19 Steering Committee you talked about before, are they involved
20 with all those lines -- all those product lines?

21 A. Yes, they are.

22 Q. I would like you to talk a little bit about azoxystrobin
23 in particular and not necessarily on a chemical level, more on
24 a business level, if you could, or your role, your involvement
25 with it. Can you describe what azoxystrobin is and how that

1 fits into Syngenta's business?

2 A. Yes. So azoxystrobin is a fungicide for control of the
3 diseases. The primary crop that we sell into is corn. There
4 is 90 million, plus or minus, acres of corn in the United
5 States and we -- that's our primary market for that product to
6 control diseases in corn.

7 Q. What are the -- there are a variety of fungicides, I
8 assume. What is unique or different about azoxystrobin?

9 A. So azoxystrobin is a long-lasting residual product,
10 meaning that it will control diseases for a long period of
11 time. Once it's treated onto the crop, disease can come in
12 later on and it's still there to control it. So it's generally
13 the strength of the product.

14 Q. And what about the types of diseases or the number of
15 diseases that it is effective with?

16 A. Yeah, so it's very broad spectrum is the way we refer to
17 it, which just means it controls lots of different pests
18 throughout the year and that it's, generally speaking, very
19 well-suited for the diseases that come into corn.

20 Q. Are there other benefits that azoxystrobin provides or is
21 known for?

22 A. Yeah. So azoxy is -- azoxystrobin is one of the products
23 that is very unique in that it gives a crop-enhancement effect.
24 What we mean by crop enhancement is this product actually gives
25 you a greening effect of the crop so that it is able to produce

1 longer in the season so -- being it doesn't dry down. If you
2 look at a late-stage corn plant, right now is a good time,
3 August, September, you start to see it die down in the field.
4 The longer that plant stays green in the field, the more grain
5 it can put on. Therefore, it has a higher yield for the
6 farmer. That's one of the aspects of this product, whether
7 there is a disease present or not, is azoxystrobin gives a
8 crop-enhancement effect that allows that plant to stay green
9 and put on more grain and therefore have a higher yield.

10 Q. Has that had a connection or impact on the success of the
11 product?

12 A. What it's done is it has allowed -- this crop-enhancement
13 effect has allowed farmers to use the product with or without
14 disease being present and still see a benefit. So they will
15 get a yield benefit from this even if they don't have diseases.
16 So it's a very unique product. There are very few products on
17 the market that offer that type of benefit, at least proven
18 that benefit, to the farmer.

19 Q. We've been talking about farmers and row crops and the
20 like. Is there also a market for I think seed care you said?
21 How does azoxystrobin play into the seed care market or how
22 much does it?

23 A. It's a very small market. We tried to launch azoxystrobin
24 into the seed treatment space years ago. It's not very
25 effective that way, and as a result, we haven't seen very many

1 sales. It's just not -- it doesn't move in the plant enough to
2 put it on the seed and get it to where it needs to be, so it's
3 not very effective as a seed treatment. Therefore, it's a very
4 small part of our sales.

5 Q. How about lawn and garden?

6 A. Yeah, there is applications in lawn and garden. I'm not
7 responsible for lawn and garden, so I can't tell you exactly
8 what they use there, but it's a very small part of our overall
9 sales.

10 Q. I guess, to the extent you have knowledge, what is the
11 sort of ratio proportion that lawn and garden would be as it
12 relates to azoxy -- a market or a demand for azoxy?

13 A. Yeah, it's probably less than 5 percent. Three to
14 5 percent overall.

15 Q. How about seed care? Do you have any sense of seed care?

16 A. Less than 3 percent.

17 Q. You talked about corn, I think. What are the main crops
18 or the driving crops as it relates to azoxystrobin?

19 A. So, obviously, we talk about row crops as being the number
20 one -- row crops being corn, soybeans, and wheat -- but there
21 is a host of other crops that are on the registration for that
22 product. So the product can be used in lots of different ways,
23 but corn is the determining crop, if you will, with the huge
24 amount of acreage that's there. It's the determining crop for
25 this product in the market.

14 1 Q. Can you describe the registration that you just mentioned?
14 2 What is a registration as it relates to azoxystrobin products
14 3 that are -- do they vary, et cetera? If you can just walk
14 4 through that.

14 5 A. So for crop protection, it's a highly regulated industry;
14 6 and what that means is the EPA has requirements for us to bring
14 7 any product to market. In order to bring a product to market,
14 8 we have to do years of research, prove that the product is safe
14 9 to the environment, safe to the users, and is something that is
14 10 actually efficacious in the field or actually controls what we
14 11 say it controls. As a result of that, you can only apply
14 12 products that have an EPA registration associated with them and
14 13 so that's what I mean by registration.

14 14 Q. Labels -- these products have labels.

14 15 A. Right.

14 16 Q. Are those labels affiliated with or connected with the
14 17 registrations at all?

14 18 A. Right. So the label is a direct relationship with the
14 19 registration; and once it gets a registration through the EPA,
14 20 what they're really registering is that product can be used
14 21 associated with the label that we've written for it. What we
14 22 do is, based on the research that we have and has been required
14 23 by the EPA, we submit a label, which is basically the
14 24 instructions for use of the product. Then the EPA approves
14 25 that label as the instructions for use and using the product

1 has to be in alignment with the instructions for use for the
2 label that you called it.

3 Q. Does the label have to list the crops that product can be
4 used on?

5 A. It certainly would, yes.

6 Q. You talked about the EPA. Do states also have regulations
7 as it relates to these products?

8 A. Yeah, each registration has a federal registration under
9 the EPA and then each state has to register it, so we have to
10 apply the same -- for the same registration in each state.

11 Q. Is that a separate process?

12 A. It is. It generally takes us another -- it depends on the
13 state, but three to six months to get a registration in the
14 state.

15 Q. How important has azoxystrobin been as a product to
16 Syngenta?

17 A. Well, azoxy is our second largest selling product in the
18 United States. It's our largest selling product globally.

19 Q. Can you explain how azoxystrobin is applied? And if it
20 varies depending on the use of it, explain that as well.

21 A. I'm sorry. Could you repeat that?

22 Q. Yeah. How is it -- how does a farmer use azoxystrobin?

23 A. So a farmer would typically take a liquid formulation,
24 which most azoxy products are a liquid formulation -- they'll
25 take that and mix it with water in a big sprayer, and they'll

1 use it in a broadcast application across the field, meaning
2 that it's sprayed through some sort of a sprayer that will
3 cover many acres at a time.

4 Q. Are you familiar with the term "technical"?

5 A. Yes, I am.

6 Q. What is a technical?

7 A. So technical is a term that we use to refer to the active
8 ingredient in its raw form that we use then to formulate into a
9 product that can be applied to the field as I just described.

10 Q. In the formulation, can one technical have multiple
11 formulations?

12 A. The technical can be turned into multiple different
13 formulations, yes.

14 Q. So the active ingredient can be formulated in different
15 ways for different uses?

16 A. That's correct.

17 Q. In terms of seed care, is -- is that a liquid application?

18 A. Yes, it is. It's a liquid application to the seed, so
19 it's much different than the broadcast application that I just
20 talked about, but it is a liquid that is applied directly to
21 the seed.

22 Q. And who does that application to a seed? Is that
23 something a farmer does himself?

24 A. No. It's typically the seed company that does that, so a
25 company that sells seed would take -- buy the product from

1 Syngenta. Then they would take it and apply it to the seed
2 before they sell it to the farmer.

3 Q. Is technical -- azoxy, for instance, is azoxy technical
4 usable in its own form?

5 A. No, it's not.

6 Q. By a farmer.

7 A. No, it would not be something that you could spray on the
8 field unless it was formulated.

9 Q. Where does Syngenta do its formulation work or
10 development?

11 A. So our formulation development is largely done here in
12 Greensboro. We have our formulation team that sits on site
13 there on Swing Road and we have the group that does all the
14 formulation work. Obviously, the formulations are done at the
15 plants themselves, but the research to build the formulation
16 would be done here in Greensboro.

17 Q. The Swing Road address you mentioned, is that the one
18 that's out on I-40?

19 A. Yeah, on I-40 at Swing Road right off Guilford College.

20 Q. We've talked about how farmers use azoxystrobin. Does
21 Syngenta sell to farmers?

22 A. Nope. We sell into the channel that then sells to the
23 farmers.

24 Q. Okay. So some terms you may use -- in this trial, we're
25 having some technical terms, but that's a marketing term, I

1 think, the channel, is that correct?

2 A. Probably.

3 Q. Let's assume that nobody understands anything about a
4 channel or a distribution channel. Can you explain who your
5 customers are -- who Syngenta's customers are and how the
6 products that you develop get to farmers at the end of the day?

7 A. All right. So Syngenta doesn't sell to any farmers, as I
8 just said. We sell to a channel, which being a distribution
9 network of customers, that then sell to a retail chain that
10 will sell to a farmer. So we have about five or six primary
11 distributors that we use and work with that we sell directly
12 to. Then they sell to retail organizations that sell to the
13 local farmers.

14 The sheer reason for this channel, sometimes we have
15 to remind ourselves, is that we're not -- as a company, we're
16 not suited to logistically serve a customer that is in remote
17 areas, so the channel performs that service for us by being
18 able to deliver product in a timely way so that the farmer can
19 use it.

20 Q. When you say you use distributors -- and you say there are
21 five or six?

22 A. There's a lot more than five or six, but there is five or
23 six that make up the bulk of our business, yes.

24 Q. Are they affiliated with you, or are they your customers?

25 A. They're our customers.

1 Q. So when you're selling, you're selling to the distributors
2 and that's your ultimate -- that's your connection, the sales
3 that you're making?

4 A. Yeah, the distributors that we use in this industry are
5 basically buying from all of my competitors as well, so they're
6 truly customers.

7 Q. They're not exclusive to you. You are trying to develop
8 their business and make sales to the distributors?

9 A. That's correct.

10 Q. How about the retailers? Are the retailers separate from
11 the distributors?

12 A. Sometimes, yes. The distributors actually -- some of the
13 large distributors own retail organizations as well, so if you
14 can imagine a Wal-Mart type of a distribution channel, they
15 have a distribution network and they have retail outlets. It's
16 the same kind of a deal. The five or six that we have mostly
17 own -- three of them own their own retail organizations and the
18 others are independent.

19 **MR. COUGHLIN:** Your Honor, if I may?

20 **BY MR. COUGHLIN:**

21 Q. I think Plaintiff's Demonstratives 1 and 2, if I'm not
22 mistaken, do you recognize these cartons?

23 A. Yes, I do.

24 Q. Is this the manner in which a retailer would sell to the
25 farmer? Is that the type of container?

1 A. Yes, it is.

2 Q. Okay. And is this sometimes referred to as an end-use
3 product?

4 A. It would be an end-use product, yes.

5 Q. So explain what end-use product is. And I know I just
6 showed you that, but try -- if you could explain what an
7 end-use product is as compared to other products that Syngenta
8 may sell.

9 A. Yes. So an end-use product is packaged much like you just
10 seen there. Typically there's those two and a half gallon jugs
11 packaged two at a time in a 5-gallon box. That's the way it's
12 sold to the customer as formulated product so they can take it
13 right out, pour it into their water, make a solution and spray
14 it out. Probably most everybody in the room has done that in
15 their own yard to spray something at one point and that's
16 generally the idea.

17 The other way that we sell product is through the
18 technical product that you mentioned before. We do sell
19 technical to other customers that then formulate their own and
20 so, you know, they take this product and they take the raw
21 product as I've described before; if you can imagine, like a
22 cup of coffee. The technical that they take is like a coffee
23 bean, and then they roast it and grind it and put it into a
24 formulation that you can then take as a coffee cup. That would
25 be kind of the process that it goes through in order to get to

14 1 that, so those are the two ways that it's sold.

14 2 Q. These two containers, these are Syngenta-branded products,
14 3 is that correct?

14 4 A. Yes, they are.

14 5 Q. Quadris is a Syngenta brand?

14 6 A. Quadris is a Syngenta brand. It is what we call straight
14 7 goods, azoxystrobin, so there's no other active ingredient in
14 8 there other than azoxystrobin.

14 9 Q. Does Syngenta do any sales that are called or referred to
14 10 as private label?

14 11 A. Yes, we do. We sell product to other -- to some of our
14 12 customers who then want to put that product in their own name,
14 13 and use that as a private label to sell.

14 14 Q. Are you familiar with the term brand ladder?

14 15 A. Yes, I am.

14 16 Q. I knew you were, but I need to -- I need you to -- I just
14 17 need to introduce this in a way that you can try and explain
14 18 what a brand ladder is and the way Syngenta uses that in the
14 19 management of its products.

14 20 **MR. COUGHLIN:** If we could display Plaintiff's
14 21 Demonstrative 8.

14 22 **BY MR. COUGHLIN:**

14 23 Q. Is that a graph of Syngenta's brand ladder as it relates
14 24 to azoxystrobin?

14 25 A. Yes, it is. And I guess it'd probably be smart to back up

1 just a little bit. A brand ladder is not a Syngenta term. A
2 brand ladder is a marketing term that's used to talk about
3 where a brand portfolio fits together. So if you have a group
4 of products that fit in a similar class, you would talk about
5 it as a brand ladder and where they fit based on the value that
6 they bring to the customer. This example that you're using is
7 a Syngenta brand ladder for azoxystrobin.

8 Q. So do all of these products here, either themselves or in
9 combination with other active ingredients, contain
10 azoxystrobin?

11 A. Yes, they do.

12 Q. I believe the two jugs we have here are for Quadris and
13 Quilt Xcel?

14 A. Yes.

15 Q. Starting with those products, can you explain, in the
16 ladder itself, walk-through that but explain the marketing and
17 why it is that products are developed and sold in this manner.

18 A. Right. So if we look at Quadris and Quilt Xcel on this
19 ladder, it's in the established brands category. What this --
20 what this indicates is that we're really talking about products
21 that have been on the market a while. They've established what
22 the value for that specific class of brands is, and it's kind
23 of the starting point, if you will, for what the value is.

24 And that's really what the brand ladder is about, is what
25 kind of value does it offer to the customer that wants to buy

1 the product. What is it that he is going to get from it as a
2 result of using the product, so that's -- that established
3 brands group, Quadris and Quilt Xcel, would be the baseline
4 starting point for the brand ladder.

5 Q. And so on this one I see Quadris. Did you say that that's
6 a straight product?

7 A. Yes. That's a straight goods product, so it's
8 azoxystrobin alone.

9 Q. It's not technical? It's been formulated?

10 A. That's correct. It's ready to be an end-use product.

11 Q. But does it have any other active ingredients in it?

12 A. It does not.

13 Q. Okay. Then Quilt Xcel is listed. Is that also a straight
14 product?

15 A. No, that's a mixture product. Quilt Xcel is a mixture of
16 azoxystrobin and propiconazole. Propiconazole is another class
17 of chemistry or different type of a fungicide/disease control
18 product.

19 Q. Did those products come out at the same time? Did
20 Syngenta introduce those two products at the same time?

21 A. No. Quadris would have been our first introduction of the
22 product as a straight goods. Generally that is the way we
23 bring products to market first is to use straight goods to come
24 to the market, establish the value, establish the brand that is
25 there, and then we'll bring out a mixture product as it is

14 1 needed. I talked a little bit about what the farmer need is
14 2 and being in touch with the farmer to understand what his needs
14 3 are. As we see new needs in the field, we try to bring
14 4 combination products, mixtures of different active ingredients
14 5 to be able to answer those needs.

14 6 Q. Below Quadris is another brand that's listed, Abound?

14 7 A. Yes.

14 8 Q. Is that also a straight product?

14 9 A. Yes, it is. Abound is a straight azoxystrobin brand
14 10 that's used outside of corn and soybeans.

14 11 Q. So are the products, Quadris and Abound, the products
14 12 themselves, are they the same products?

14 13 A. Yes, they are.

14 14 Q. So why -- what is different about them, other than their
14 15 name?

14 16 A. Their -- the label that they're sold under is different so
14 17 they're registered in different crops for use, and the pricing
14 18 structure is different as a result of that.

14 19 Q. And when you say the label is different and has different
14 20 crops, even though they're the same -- it's the same chemical,
14 21 could you buy Abound and use it on a crop that's on the Quadris
14 22 label?

14 23 A. Not legally, no.

14 24 Q. Okay. So in -- so they're not interchangeable, is that
14 25 correct?

1 A. That's correct.

2 Q. So if somebody was a corn farmer, and assuming that
3 they're going to follow the law, would they ever buy Abound,
4 even though it's the same product as Quadris?

5 A. No. It wouldn't be available to them through the
6 distribution channel in the markets that grow corn. It's
7 really in the peanut area is where its primary use is.

8 Q. And when you -- when Syngenta went through the
9 registration process for Quadris and Abound, it requested
10 permission to be able to sell those two products with different
11 labels, or they requested different labels for the products?

12 A. Yes.

13 Q. And there's a different market for those two products, is
14 that correct?

15 A. That's correct.

16 Q. Now, Quilt Xcel, I think you said, is a mixture. Is that
17 an innovation or trying -- developing a new product from the
18 first azoxy product that Syngenta had?

19 A. Yes, it is. The Quilt Xcel is really an innovation of
20 bringing two formulations together, so most people -- we get
21 this question a lot. Most people believe that you can take two
22 formulated products, pour them in one jug and all of a sudden
23 you have a new product. The reality is that it won't stay in a
24 mix if you do that because it takes different things to keep
25 different active ingredients available, and so once you pour

1 the two together as the formulations stand, they won't work or
2 they won't stay in a formulation and, therefore, you have to go
3 back and do quite a bit of work to get that formulation right.

4 Q. So if Quilt Xcel is an improvement or enhancement of
5 Quadris with an additional active ingredient, why does it
6 appear on the established brand rung of the brand ladder?

7 A. Because it's been in the market for quite some time. We
8 don't know the year actually that we brought it out, but it's
9 several years ago. It's an established brand, and it's
10 well-known in the space.

11 Q. In terms of the -- I want to go up in the brand ladder.
12 There's a listing of enhanced brand. Can you describe what
13 that is?

14 A. So enhanced brands is very much like I just described with
15 Quilt Xcel, that we found something that could be added to the
16 product alone that would give an enhanced benefit to the
17 customer, and by putting these combinations together, it brings
18 a new value proposition to the farmer, so that's what these
19 enhanced brands are all about.

20 So for instance, Quadris Top, actually Quadris Top, all
21 three of these brands are based on different mixtures of
22 azoxystrobin and difenoconazole, which is another fungicide
23 that's very active on certain pests.

24 Q. And we've heard about azoxystrobin and the development of
25 that in Quadris. Is there formulation and development work

14 1 that goes into each of these new brands?

14 2 A. Yes. It takes -- it takes quite a lot to keep products in
14 3 suspension, meaning that they will stay mixed together once you
14 4 put them in, so there's a lot of work that goes into that.

14 5 Q. The next rung on the ladder is combination of brands. Can
14 6 you describe the role that that rung plays in the ladder.

14 7 A. Right. So what this group is talking about, the
14 8 combination of brands, is when you sell two brands together
14 9 that maybe do something totally different. In this case, it's
14 10 Quilt Xcel, which we've already talked about,
14 11 azoxystrobin/propiconazole mix; two fungicides mixed with an
14 12 insecticide.

14 13 So Endigo is an insecticide product that we have in our
14 14 portfolio, and by selling those products in a combination
14 15 together to -- as one package to the farmer, he gets a
14 16 different benefit. The benefit is, generally speaking in this
14 17 case, he gets to go across the field one time instead of two,
14 18 so he's spraying the same products at different times, or he
14 19 can put the two in the tank together and spray them as one, and
14 20 we offer that as an option for the farmer.

14 21 Now, the interesting thing about this is in talking about
14 22 the formulation even more, the -- not just any products will
14 23 mix in a tank either. You have to have good formulations to be
14 24 able to put in a tank and then add the water and whatever else
14 25 you're putting with them to make sure that they will actually

1 spray out or don't clog the sprayer up or anything like that.

2 Q. And the top rung of this ladder is entitled next

3 generation premium brands. Please describe that role.

4 A. So the next generation brands that we're describing here
5 are based on a new active ingredient that we just brought to
6 market 2016 called Solatenol. Solatenol is a new fungicide
7 class of chemistry that gives a totally different control of
8 pests. It's mixed in this case with azoxystrobin and both
9 Trivapro and Elatus. It's mixed with azoxystrobin to even
10 broaden the spectrum of control further than what we saw with
11 azoxy before.

12 Q. These products do have azoxystrobin?

13 A. Yes. So Trivapro is actually a mix, if you will, of Quilt
14 Xcel plus Solatenol, so it's three active ingredients in there.

15 Elatus is a mix of azoxystrobin and Solatenol together,
16 two way.

17 Q. And let's go to the bottom of the brand ladder. It's
18 listed fighting brands. Can you explain what a fighting brand
19 is.

20 A. Sure. A fighting brand is typically when we are under a
21 lot of competition and our customers are finding it very hard
22 to compete with another competitive company out there with a
23 low price. They need something to be able to offer to their
24 customers that allows them to compete and not bring down their
25 market. So what I mean by that is when the price of Quadris

1 gets lowered, everything above it gets lowered as well, and so
2 the more that you lower that price, the more the market
3 declines, the less value that the -- that our customers can
4 take from that market, so there's less opportunity.

5 Q. So back this up a little bit if you would because I think
6 it may relate to the channel you're talking about before. You
7 said the customer, you're trying to have your customer compete.
8 Who are you referring to?

9 A. Yeah, so the distributor retail channel that you've just
10 mentioned, that's the customer I'm referring to.

11 Q. And how is having a fighting brand help the customer?

12 A. So you can -- there's two ways to address competition.
13 You either lower the price on your total portfolio, which
14 devalues the opportunity for them to make money, or you give
15 them a portion of the market opportunity through a different
16 brand that doesn't devalue the rest of the portfolio, and so
17 that's what you're trying to do with a fighting brand.

18 We've all seen these in retail stores. There's a fighting
19 brand out there for everything. What they're really trying to
20 do is offer you a similar quality product at a lower price so
21 that it doesn't devalue the rest of the overall portfolio.

22 Q. Is this ladder a stagnant ladder? Is it a fixed ladder?
23 Does this change over time?

24 A. It certainly changes over time. A good example of that
25 would be you mentioned Quadris and Quilt Xcel. At one point,

1 Quilt Xcel would have been the top rung of this ladder because
2 it was the latest innovation, but once it's been in the market
3 a while, we have a new innovation, we move it down, and the new
4 product comes in, so Quadris Top may have been the top product
5 a couple of years ago and so forth.

6 Q. And the pricing within these products, I think you
7 indicated that certain competition, if you moved it down, you
8 can devalue the whole ladder. How is pricing between the
9 various rungs in this ladder interconnected?

10 A. So they're all connected really to the established brands
11 rung of the ladder. So really looking at once you've
12 established what the brand is worth based on what it perform --
13 what it does to perform for the customer, what the customer's
14 willing to pay for it based on that, then everything else is
15 priced differentially based on that. So it's a step up, just
16 like the ladder indicates. Everything is a step up in value
17 for the customer and for Syngenta.

18 Q. If there's a change in the price on one rung of the
19 ladder, does that affect the rungs above it?

20 A. Sure. If you can imagine a ladder sitting up against your
21 house and you cut out the legs underneath it, the ladder's
22 going to slide down every time you cut the legs out. It's the
23 same with the price. Once the price comes down on the bottom,
24 the next rung of the ladder drops down and so on and so forth
25 so it's that simple.

1 Q. This is Syngenta's current brand ladder for azoxystrobin,
2 is that right?

3 A. Yes, it is.

4 Q. What was on this -- what was the brand ladder, what did
5 the brand ladder look like in 2014?

6 A. 2014 it would have had the center three sections, so it
7 would have had the established brands, enhanced brands and
8 combination brands only.

9 Q. And in terms of the fighting brand, how does that help
10 with Syngenta in terms of its market and its products in
11 response to competition?

12 A. So really what it's doing is giving an option to the
13 customer to be able to reduce a price on a certain percentage
14 of their business without lowering the overall brand ladder
15 value for them or for us, because obviously they make a margin
16 based on what their value they're offering as well, and if
17 their price is lower on the total, then their opportunity is
18 lower as well.

19 Q. I'd like to change topics a bit. Are you involved in or
20 familiar with Syngenta's budgeting process?

21 A. Yes, I am.

22 Q. How so?

23 A. As the head of marketing, I lead the budgeting process.

24 Q. Have you been involved in budgeting, the budgeting
25 process, at times before you were the head of marketing?

1 A. Yes. Probably the first interaction with the budget
2 process was when I was a district sales manager back in Iowa
3 several years ago. So different times in my career I prepared
4 information for the budget.

5 Q. Does Syngenta have an established process that it follows
6 in developing its budgets?

7 A. Yes, we do.

8 Q. And what does Syngenta use budgets for? What is the
9 purpose, the business purpose, of developing budgets for
10 Syngenta?

11 A. Yeah. So most people think of budgets and they think, oh,
12 I gotta set a budget to save some money and take care of my
13 spending. That's really not what we're talking about with
14 budgeting. No.

15 We're talking about setting our targets for the year,
16 making sure that we have a process to evaluate the market,
17 understand what the market opportunity is, and then we're going
18 to deliver so much in sales as a result of that market
19 opportunity that's been described through the process. So
20 that's really what the budget is really all about.

21 Q. Does Syngenta use the budget in making its business
22 decisions?

23 A. Yes. The budget is really used to understand what the
24 opportunity is, as I've said, and really understand what we can
25 invest as a result of that opportunity. So it's really a

1 situation where we invest based on what we believe we can
2 deliver in order to better our business for the future.

3 In addition to that, we use our budgeting process for
4 things like sales incentive plans, bonus structures, all those
5 type things, so it's really important for the employees to make
6 sure that the right information is fed in to get that well
7 done.

8 Q. Does Syngenta use it for making hiring decisions or
9 investments?

10 A. Yeah. Investments including hiring decisions, how we will
11 invest for research and development to bring new technologies
12 to market, how we're going to invest for simple things like
13 investing in the community and all of those kind of things here
14 in Greensboro.

15 Q. So I would -- you indicated there is a process. I would
16 like for you to walk us through that process and bring it down
17 to a level, to the best you can, so everyone can understand
18 what is involved in that process.

19 A. Okay.

20 Q. Let me -- maybe to get some time reference, is there a
21 certain time each year that Syngenta sets its budget for the
22 next year?

23 A. Yes. So the budget is typically finalized and set,
24 approved in October of each year for the following year.

25 **THE COURT:** For the following calendar year?

1 **THE WITNESS:** For the following calendar year, yes.
2 The process really starts a full year plus before that. So
3 what really happens is -- and it's probably best if I just
4 describe the process we're in today.

5 **BY MR. COUGHLIN:**

6 Q. Yes, sir.

7 A. For the 2018 budget, we really started planning for that
8 budget last June, so 2016, June is when that planning process
9 would have started. And what it really is, is understanding
10 what the market assumptions are. So you take the information
11 going into June. The product leads or product managers for our
12 company would look at each of the individual product lines.
13 They would then make assumptions based on what has happened,
14 what they see is going to happen using market intelligence,
15 using different market research information, to build out what
16 that set of assumptions looks like, to talk about their product
17 plans for each of the different products that they're
18 responsible for. Once that product plan is put together,
19 usually sometime around October that's finalized for the -- for
20 each of the product plans.

21 Then it goes through a peer-review process. So what that
22 means is each of the different product leads from the different
23 parts of the business, in other words, herbicides, fungicides,
24 insecticides, seed care will all come together in one room and
25 debate the assumptions that are being used for each of the

14 1 product plans.

14 2 Q. If I can interrupt you for a second to make sure we're
14 3 clear on the timing. Put into context of, let's say, the 2018
14 4 budget, you said it is finalized in October?

14 5 A. Correct.

14 6 Q. But now, you just -- you referenced October. Are you
14 7 talking about -- this would be October of '16 still --

14 8 A. Correct.

14 9 Q. -- the process?

14 10 A. Yup.

14 11 Q. Okay.

14 12 A. So from June '16 to October '16, there is an enormous
14 13 amount of work done on each of the product plans. That is
14 14 really the kickoff of our budgeting process, so each product
14 15 individually going down to the fine detail for each of the
14 16 products. And then they go through a peer-review process.

14 17 Once the peer-review process is done, the plans will then
14 18 be presented to the Crop Protection Leadership Team, generally
14 19 in December. Sometimes it falls into January. But December,
14 20 they will review those plans in a Crop Protection Leadership
14 21 Team meeting, where they're either signed off or rejected or
14 22 told to go back and work it again, but that's generally when
14 23 it's signed off.

14 24 Then, from the Crop Protection Leadership Team meeting
14 25 where the plans are tied off, then we start to look at the

1 following year's pricing. So for 20 -- excuse me, 2018 budget,
2 we started working on the pricing in January of 2017.

3 Q. When you said signed off after it goes to the Crop
4 Protection Leadership Team, you're not saying you finalize the
5 budget for ---

6 A. No.

7 Q. Okay.

8 A. Nope. That's just the product plan saying, yes, we agree
9 that these assumptions are right, this is what we should plan
10 for, now let's start the budget process based on this
11 information.

12 Q. Can you describe a little bit more detail the peer review
13 that you just went through? Who are the peers? Who are the
14 people involved?

15 A. Right. So the peer review with the product leads, so the
16 Herbicide Team would review the Fungicide Team's plans, and
17 back and forth. So, in other words, the azoxystrobin manager,
18 the mesotrione manager, which is herbicide, those two would get
19 in the same room and talk about the products' assumptions, what
20 we see happening in the market and corn, is it right, is it
21 different, what should we think about, do we need more
22 information, that type of thing, and challenge each other.

23 Q. What is the benefit? Why is that done? Why that
24 peer-review process?

25 A. We have an enormous amount of experience within our

1 Marketing Team. Most of the guys that I'm talking about have
2 15, 20 years in the industry from various different
3 backgrounds. So, being able to bring that knowledge together
4 in one place and all the different ways of thinking gives it a
5 real grounded effect so that we really feel very confident in
6 what we're getting at the end.

7 Q. And these different product leads, do they share some
8 customers, or -- you mentioned corn. But do they share -- is
9 there overlap in the various assumptions that are being
10 discussed and made?

11 A. Yeah. So these products are generally all used in the
12 same market space, same customer base. There are slight
13 variations, but in general, they're all the same. Azoxystrobin
14 and mesotrione are both sold to corn customers across the
15 midwest.

16 Q. Okay. So, into the January time where the sign-off
17 occurred, you said you start building the budget and some of
18 the pricing assumptions. If you can take it back from there
19 and go forward.

20 A. Right. So we start out by building out what our pricing
21 for the following year would look like. And then we start to
22 look at, okay, based on that price, if we take that price, what
23 kind of volumes can we actually sell in the marketplace.

24 And then, what we do with that information is we start
25 with the commercial units. So the people that are in the

1 field, we start working with them to talk about, okay, does
2 this feel realistic, is there good information from your
3 customers that says this is the right assumption to take, how
4 much volume could you sell based on these prices and this
5 assumption base. That goes on for a series of weeks and
6 months, actually.

7 Q. Let me interrupt you and ask you. You said "commercial
8 units."

9 A. Yes.

10 Q. What is a Commercial Unit? And if you can explain that --
11 that role.

12 A. So across the United States, we have four commercial
13 units. The commercial units are really individual businesses
14 in crop protection across the United States. So we really have
15 one person that's managing a group of salespeople out in the
16 field. That's a commercial unit, and we have four of those
17 across the US.

18 So those people are directly involved with the customers
19 on a day-to-day basis. They have direct responsibility for the
20 sales. So, in the end, they're the ones actually making the
21 sale.

22 Q. And how are the commercial units divided up? Is it
23 geographic?

24 A. It's mostly geographic. We have one that's the south and
25 east coast, so it's everything across southern US up to

1 Kentucky and across up to New York. And then we have one
2 that's just to the east of that, that would be Kentucky north
3 over to Iowa. We have another one that's Iowa over to Arizona,
4 and then the west coast is the rest.

5 Q. So the commercial units, in terms of their input, their
6 review, that occurs in, generally, what period of time?

7 A. I'm sorry. Repeat the question.

8 Q. The commercial units, you indicated you go out to the
9 people in the field, the people who are making the sales to
10 your customers. At what point in time are they doing that
11 review and giving that feedback?

12 A. Yeah. So that generally starts in May of each year. So
13 we really spend from January till May working a pricing and
14 there's peer reviews, different things that go on in or
15 Marketing Team for that in between. But then, once we get
16 through that, we go into May, where we start to work with the
17 teams in the field to understand where we are and do a peer
18 review there as well.

19 Q. When you say "we" in that context, are you referring to
20 the Crop Protection Leadership Team, or who is the "we" in
21 that?

22 A. The "we" would be the Marketing Team and the commercial
23 units.

24 Q. So what is the next step in the process?

25 A. So the next step in the process would be that once we have

1 general agreement with the commercial units, then we would make
2 a presentation to the Crop Protection Leadership Team. We
3 would come together as a -- as a group, including the
4 commercial units, to debate, call it a peer review if you want,
5 but it's really a debate of can we do this or not, what should
6 we be looking for more, how much more or less. And then at the
7 end of the day, we would -- we would sign off on that
8 regionally here in -- usually in August.

9 Q. So that's -- the sign-off on that, does that finalize the
10 budget?

11 A. No.

12 Q. Okay.

13 A. So that finalizes our review of the budget for
14 presentation to our global team. Our COO would then sign off
15 on it in September or October time frame.

16 Q. Is it -- between the time the Regional Team signs off on
17 it and it's ultimately approved, is it reviewed again or
18 criticized and questioned?

19 A. All the time. I think by the time we get to that point,
20 there is a lot of input back and forth, there is a good
21 dialogue with the commercial units, and there's a lot of
22 debating that goes on between the August time frame and the
23 October time frame.

24 We made our first -- for instance, we made our first
25 presentation to global on the 2018 budget two weeks ago. They

1 will then take until October, but we'll have a formal
2 presentation, and, hopefully, get an approval.

3 Q. Is the process ongoing now -- the beginning of the process
4 going on now for the 2019 budget?

5 A. Yes, it is.

6 Q. Do those overlap for a period of time?

7 A. Yes, but not necessarily the same people. So our product
8 leads are somewhat out of it once we get to -- out of the
9 process once we get to the regional review that I talked about,
10 and they can start for the 2019 season now. So they started
11 about a month or more ago.

12 Q. And the final sign-off, now, is there -- the final
13 approval of the budget --

14 A. Right.

15 Q. -- at the end of the company -- or at the end of the
16 process, you said, I think, October or November?

17 A. It's October.

18 Q. Okay. October. Who actually makes that final -- what
19 entity or body makes that final approval?

20 A. Our chief operating officer will sign off on that.

21 Q. In terms of your role and involvement, are you involved
22 with this process throughout?

23 A. Yes, I am.

24 Q. And in terms of crop protection in the United States, is
25 this one of your main areas of responsibility?

1 A. Yes.

2 Q. And in terms of individuals, who are the other -- some of
3 other key individuals who are involved with azoxystrobin
4 budgets?

5 A. All right. So the product lead would be directly
6 responsible for the start of the process.

7 Q. And who is that? I would like some names.

8 A. Yeah. So Andrew Fisher is the azoxy lead. Then, from
9 there, it would be multiple people taking touch points. But
10 the Crop Protection Leadership Team would be the major one
11 after them.

12 Q. And then, your involvement, you're on the Crop Protection
13 Leadership Team?

14 A. Yes.

15 Q. Once the budget for the year is finalized, does that
16 budget change as the year goes on?

17 A. No, it's an annual process. You can see it's quite an
18 in-depth process. You couldn't get it done more than once a
19 year. So we have a process that's locked down in October.
20 Once that's done, it is the budget for the year.

21 Q. And as of October, is that the company's best estimate and
22 belief as to what the performance of the various products are
23 going to be during the next calendar year?

24 A. Yes, it is.

25 Q. Are you familiar with the term "LP"?

1 A. Yes, I am.

2 Q. What is, in Syngenta's business, an LP?

3 A. It's a latest plan is what it's referred to. You'll hear
4 "last plan" sometimes, but "latest plan."

5 Q. What is a latest plan?

6 A. It's a forecast.

7 **THE COURT:** Say again.

8 **THE WITNESS:** It's a forecast. So what a last plan
9 is, is it's looking at what the current business is doing, how
10 we're performing. So it's -- we're required to do a monthly
11 forecast of the business, how are we performing against our
12 budget. And that happens once a month, so that's a last plan.

13 **BY MR. COUGHLIN:**

14 Q. How is that plan or those forecasts reported?

15 A. So the forecast is reported through our demand -- Demand
16 Management Team that is ultimately responsible for collecting
17 the numbers for the business through our commercial units. And
18 then the -- they're fed into the Finance Team, who loads them
19 into our financial system through SAP --

20 **THE COURT:** Through what?

21 **THE WITNESS:** SAP Reporting. It's a data tool. And
22 then that's -- that's where it's housed, in the data tool.

23 **BY MR. COUGHLIN:**

24 Q. So SAP, is that, like, an accounting system?

25 A. It's an accounting software, yes.

1 Q. And how frequently are those LP -- is there a report
2 that's generated, like, for an LP?

3 A. Yes, they are. They're done monthly, and they're
4 generally done the sixth day of every month -- sixth working
5 day of every month.

6 Q. And the purpose of that report is to project how things
7 have developed towards budget or what the latest forecast is
8 for the calendar year?

9 A. That's correct. Obviously, some things change throughout
10 the year, and you know, understanding how the different
11 products are coming in, customer update, whatever, and so that
12 you can adjust on the go.

13 Q. The budgetary process that we've been discussing, is that
14 process used -- has that process been used for azoxystrobin
15 products?

16 A. Yes. It is used for all of our products.

17 Q. Is it used for herbicides?

18 A. Yes.

19 Q. And, again, how does Syngenta rely upon this budget in the
20 operation of its business?

21 A. So the budget is the book that we live by, so to speak, on
22 an annual basis and understanding. The budget is used as a
23 tool to set an expectation for the year. So, that expectation
24 is handed down from our COO that I talked about. It is what we
25 live by. It's what our -- what our incentive plans are built

1 on. It's how we are managed and judged at the end of a year.

2 Q. Is it -- is the process one that everyone who is involved
3 in it is trying to do the very best job to make the most
4 accurate prediction they can?

5 A. I certainly believe that we do our absolute best. I mean,
6 the process that I outlined is consuming an enormous amount of
7 time and resource, so we certainly need to make sure that we're
8 putting every effort to get that right.

9 Q. As head of Crop Protection Marketing, are you -- do you
10 have any responsibility for mesotrione?

11 A. Yes, I do.

12 Q. Can you explain what mesotrione is?

13 A. Mesotrione is a corn herbicide. It's used to control
14 weeds in corn. It is the largest selling corn herbicide in the
15 world.

16 Q. In terms of its use, how similar is its typical use to
17 azoxystrobin in terms of the customers or the growers who would
18 be using it?

19 A. So the growers would be the same. The customers that buy
20 products from us would be the same as -- azoxystrobin and meso
21 would both be products that they would use in corn.

22 Q. And in terms of corn being the major crop for both
23 products, does corn and the forecast with regard to corn factor
24 into the budgeting of both of those products?

25 A. Yes, it does.

1 Q. How so? Can you explain or drill down a little bit, in
2 terms of the various assumptions that are considered in making
3 your budget and determining your budget, what factors overlap
4 between the two products?

5 A. So they would overlap directly in most ways. So, as I
6 mentioned earlier, corn is roughly 90 million acres grown in
7 the US annually. There is -- to put that in perspective,
8 there's approximately 87 million acres of soybeans, which is
9 second largest crop in the US. So it is, by far, the
10 largest -- corn is, by far, the largest crop.

11 We would assume, you know, how many acres are projected by
12 the USDA. We would make assumptions based on what the prices
13 are, again, based on USDA estimates.

14 **THE COURT:** When you say "prices," you mean the price
15 for the corn?

16 **THE WITNESS:** Yes. So price -- corn is -- that's a
17 great question. Corn is a commodity product. So the farmer
18 only makes money if he's selling corn for a reasonable price.
19 So we obviously have to consider what the price of corn is
20 going into the year based on what the USDA is telling us.

21 So those are things that we would assume. We would
22 also make assumptions around what weather patterns are, what we
23 expect to happen as a result of those weather patterns. You
24 really have to look at things like inventories, understanding
25 what were the patterns of use the year before, based on what

14 1 happened in the marketplace and what will they project to use
14 2 in the year coming.

14 3 So all of those things would be very standard for
14 4 both of those products, azoxystrobin and mesotrione.

14 5 **BY MR. COUGHLIN:**

14 6 Q. In terms of the people who are involved in those different
14 7 products, are -- in terms of the peer review, going back to the
14 8 peer review, the folks who are involved in setting the budget
14 9 as it relates to azoxystrobin, are they the same, or is there
14 10 overlap of the people who are setting the budget for
14 11 mesotrione?

14 12 A. Yeah, they are going to be very similar people. I think
14 13 the -- obviously, the product lead is where it all starts, as I
14 14 described before. Those people are going to peer review each
14 15 other and challenge each other along the way, and they both
14 16 understand corn.

14 17 I think it's also interesting to understand that the
14 18 people that are in these roles as product leads would have
14 19 backgrounds similar to mine. So they're not coming in off the
14 20 street. They're certainly experienced. They understand the
14 21 market. They've been in the field. Andrew Fisher, for
14 22 instance, has a very similar background to mine with district
14 23 manager experience. He's been in the field. He understands
14 24 the crops, all those kind of things. So those are the kind of
14 25 people that we have typically in those roles.

14 1 Q. You talked a little bit earlier about the plant
14 2 performance or enhanced performance associated with
14 3 mesotrione -- or, excuse me, azoxystrobin. How does that play
14 4 into the budgeting process, if it does?

14 5 A. Yeah, so it's a crop-enhancement effect that we referred
14 6 to that really gives a benefit with or without disease. So
14 7 what it has done over the years, as we've seen this be more and
14 8 more of a use over the last ten-plus years, we've seen that the
14 9 stability of our azoxystrobin business is much, much higher
14 10 because customers are using it with or without the presence of
14 11 disease. So, in other words, what that means is there is less
14 12 of a factor from weather, less of a factor from disease and how
14 13 they use the product azoxystrobin.

14 14 Q. Has that been a focus of Syngenta's business development
14 15 or marketing is to talk to farmers about planned buying based
14 16 on performance?

14 17 A. Yes. Certainly farmers are more budgeting -- mostly
14 18 across the Midwest corn market, they're budgeting for the use
14 19 of a crop-enhancement-type product. So it's a product that
14 20 they're looking for at the beginning of the year to say, okay,
14 21 I know I need my herbicides, I know I need my fungicide, and I
14 22 know I'm going to use fertilizer; so, therefore, I put it in
14 23 the budget, and I make sure that I have that money available.

14 24 Q. In terms of fungicides generally, they are to treat
14 25 disease, is that right?

1 A. Yes.

2 Q. In terms of fungicides generally, do all fungicides have
3 this enhancement characteristic or effect with plants?

4 A. No, they do not. The strobilurin class of chemistry is
5 very specific to this. Strobilurin is azoxystrobin. That's
6 just the class of chemistry that it has --

7 **THE COURT:** Have what? I'm having a little trouble
8 hearing you there, and you're talking a little fast.

9 **THE WITNESS:** Sorry.

10 **THE COURT:** That's okay.

11 **THE WITNESS:** Strobilurin class of chemistry is the
12 class that gives a crop-enhancement effect, and that's just a
13 technical term for azoxystrobin. And we've done many, many
14 years of research to prove that that product does give you
15 something more than just a fungicide or a disease control
16 product. So that's well documented.

17 **BY MR. COUGHLIN:**

18 Q. But is that -- I'm trying to distinguish. Is that unique
19 to azoxy-type products as opposed to non-azoxy-based products?

20 A. We have many fungicides in our portfolio. Azoxystrobin is
21 the only one that we have proven has a crop-enhancement effect.

22 Q. In terms of the growers, who I guess drive the initial
23 demands, but the growers who use azoxystrobin, are they more in
24 the category or has the experience been they are more of the
25 planned buyers of a fungicide as opposed to buyers who may buy

1 only in the need of a disease?

2 A. Yeah. So the answer is yes. Typically, the farmer will
3 buy based on the crop-enhancement effect more than disease
4 control when he's buying azoxystrobin.

5 Q. In terms of mesotrione as a herbicide and azoxystrobin as
6 a fungicide, are they used at the same time of the year?

7 A. No, they're not.

8 Q. Explain that, if you would, please.

9 A. So the herbicide is typically sprayed at the time of
10 planting or shortly after planting the crop. So it's very
11 early in the season, somewhere around the April-May time frame,
12 depending on when they get to the field.

13 Azoxystrobin is used later in the season when the corn
14 plant is reaching maturity. So it's usually a July or August
15 application before they get to that application, and that's
16 just based on the effect that it has on the plant. It's very
17 important to protect from weeds early in the season when the
18 plant is small. That's when it's most susceptible to a weed
19 damaging the yield. When it's later in the season is when it
20 has a disease problem, and that's when you need to spray it.
21 So it's usually a July, August application.

22 Q. In terms of the yield increase, is yield increase
23 something that all Syngenta's products are designed to try and
24 increase?

25 A. Yes. We would hope that all of our products give you some

1 sort of a benefit in yield. What our crop protection products
2 are really designed to do is to maximize the potential of a
3 crop. So when the plant is put into the ground, there is
4 immediately biological challenges, weather or weeds or diseases
5 or insects or something, that's trying to take that yield away
6 from the plant. What the products are designed to do is to
7 make sure that that plant gets the opportunity to develop to
8 its full potential and to yield a good crop.

9 Q. And how is yield measured by a farmer's standpoint?

10 A. So a yield in corn crop is measured in bushels. In the
11 end, it's measured in how many dollars he takes home.

12 Q. But explain what a bushel is. Does it vary by crop? Dumb
13 it down to my level, please.

14 A. I didn't know you were going to ask that. Sorry. The
15 yield is usually 52 pounds. A bushel is a 52-pound bushel for
16 corn, so if you can imagine a bushel basket. Most people see a
17 bushel basket, it's this big, and that's 52 pounds of corn.

18 Q. Is that per acre?

19 A. Typically, a yield for a corn crop, depending on what
20 state you're in and what soil type you have, is somewhere
21 around 200 bushels per acre.

22 Q. And so if there's an increase in bushels, that's more that
23 the farmer is able to take and sell, is that your translation,
24 into the dollars?

25 A. That's correct. So if you think about the commodity price

1 of corn, they're going to take that bushel or that 200 bushels
2 to the local grain elevator where he will sell it for dollars.

3 Q. And in terms of the enhancement that you talked about with
4 azoxystrobin in terms of performance, has there been any
5 estimates over time in terms of the enhancement, either by
6 bushels or otherwise, the effect of azoxystrobin?

7 A. The enhancement is really based on the yield that it
8 brings and the return on investment that the farmer gets.

9 Q. Are you familiar with the term "gross-to-net reports"?

10 A. Yes, I am.

11 Q. Can you explain what a gross-to-net report is?

12 A. Well, a gross-to-net report is a report within Syngenta
13 that I get monthly. It is really a view of what our pricing is
14 doing in the field. In other words, we release a gross price,
15 which is our full visible price, to the customer, our channel,
16 and then the net price is actually what it sold for at the end
17 of the day. So gross to net is just the difference between
18 what it is priced at versus how we're able to sell it in the
19 market.

20 Q. And is that generated out of that same SAP software system
21 you described earlier?

22 A. Yes, it is.

23 Q. That's a system that Syngenta uses in the ordinary course
24 of its business?

25 A. Yes, we do.

1 Q. Does the budget appear in the gross-to-net reports when
2 they're published?

3 A. Yes, it would show a view of our budget.

4 **THE COURT:** I'm sorry, what?

5 **THE WITNESS:** It would show a view of the budget
6 versus the gross to net.

7 **THE COURT:** You fade off at the end, so you just
8 might bring the mic a little closer there.

9 **BY MR. COUGHLIN:**

10 Q. Can you repeat what you just said?

11 A. So a gross-to-net report is going to show you the view of
12 our annual budget versus the gross-to-net selling price.

13 Q. And it's on a monthly basis?

14 A. It is.

15 Q. Is the LP that you were discussing earlier, does that
16 appear on the gross-to-net report?

17 A. Yes, it will.

18 Q. And so that's a number that's a projection, latest plan --
19 or last plan, and that's on a monthly basis, is that right?

20 A. Yes.

21 Q. But that same report, does that have the budget for the
22 year that you described earlier in terms of being finalized in
23 October of the prior year?

24 A. Yes.

25 Q. And does that same budget figure stay static throughout

1 the year on all of the gross-to-net reports?

2 A. The budget figure stays static through the year, yes.

3 Q. If you could look at the binder that's in front of you,
4 and there are four tabs labeled 10A -- excuse me -- 110A, 123A,
5 140A, and 148A. If you could briefly look at those.

6 A. Okay.

7 Q. All I want you to do is look at them and confirm for me if
8 they are gross-to-net reports for 2014, '15, '16 and '17?

9 A. Yes, they are.

10 Q. Take a minute to review them.

11 **MR. COUGHLIN:** For the record, those are Plaintiff's
12 Trial Exhibits, 110A, 123A, 140A, and 148A. Your Honor, we
13 move to admit those exhibits.

14 **MR. TILLER:** No objection.

15 **THE COURT:** They'll be admitted.

16 **BY MR. COUGHLIN:**

17 Q. Are those budgets -- and those are the gross-to-net
18 reports that reflect the actual budget of Syngenta for each of
19 those years?

20 And let me withdraw that question. The gross-to-net
21 reports in there, are they for all of Syngenta's products, or
22 are they for certain of Syngenta's products?

23 A. It looks like they are for azoxystrobin and mesotrione
24 products.

25 Q. How about for Solatenol products?

1 A. I don't see Solatenol products.

2 Q. For Solatenol, that product hasn't been on the market
3 since 2014. So for that particular product, you can look at
4 2016, which is Exhibit 148A.

5 A. It is on the later reports, yes.

6 **THE COURT:** I'm sorry, what?

7 **THE WITNESS:** Solatenol is on the later reports.

8 **BY MR. COUGHLIN:**

9 Q. My question -- I guess what I'm asking is those budgets
10 that are reflected there, are those all the budgets for
11 azoxystrobin and mesotrione or 2016 Solatenol that were
12 generated by Syngenta through the budget process that you've
13 been discussing earlier?

14 A. Yes, they are.

15 Q. I would like to change topics.

16 A. Okay.

17 Q. Are you familiar with the Defendant in this case,
18 Willowood?

19 A. Yes, I am.

20 Q. Describe your knowledge of Willowood.

21 A. Willowood is a generic supplier of products that have
22 become off patent over the last years.

23 Q. And does Willowood sell azoxystrobin products?

24 A. Yes, they do.

25 Q. Do you know the names of those products?

1 A. Yes, I do. Azoxy 2SC, AzoxyProp Xtra, and Tebustrobin.

2 **THE COURT:** I'm sorry. What was the last one?

3 **BY MR. COUGHLIN:**

4 Q. Can you spell that for the court reporter?

5 A. Probably not. T-E-B-U-S-T-R-O-B-I-N.

6 Q. And do those Willowood products compete with Syngenta's
7 azoxystrobin products?

8 A. Yes, they do.

9 Q. How do they compete?

10 A. Directly. They are look-alike products to our products.
11 The first two -- Azoxy 2SC is a duplicate to Quadris.
12 AzoxyProp Xtra would be a duplicate to Quilt Xcel. Tebustrobin
13 would actually not be a duplicate product but in the same space
14 as Quilt Xcel.

15 **MR. COUGHLIN:** David, if you could pull up
16 Plaintiff's Demonstrative 8.

17 **BY MR. COUGHLIN:**

18 Q. The brand ladder that we have back up here, the Azoxy 2SC,
19 what product in particular -- is that identical or
20 substantially the same as a particular Syngenta product?

21 A. Yeah, it would be identical to Quadris.

22 Q. Okay. And that's the straight product?

23 A. It is.

24 Q. So it's just azoxystrobin in terms of an active
25 ingredient?

1 A. Correct.

2 Q. And how about the AzoxyProp Xtra?

3 A. AzoxyProp Xtra would be a duplicate of the Quilt Xcel. So
4 it is a combination product of azoxystrobin and propiconazole.

5 Q. In terms of the brand management that you have and the
6 role you have with the company, are you aware that generics
7 have a right to the compete in the marketplace?

8 A. Yes, I am.

9 Q. How is it that you've experienced generics and the role
10 that they play in the marketplace as it relates to crop
11 protection?

12 A. So there's a time of exclusivity within any product life
13 cycle. Under the patent, once you've done all the work, you've
14 submitted the data, you've done all the research, it typically
15 takes 12 years to bring a new active ingredient to market. It
16 typically takes \$260 million to get it through all the
17 regulatory process that you have to go through to bring a
18 product to market on average. Then there is an exclusive
19 period of time that you can sell those products in the market
20 to help to recoup part of that cost. Once that exclusivity or
21 the patent life is over, then companies can enter that space
22 with the generic, citing your data to do that.

23 Q. In terms of -- you said the exclusive right to sell. Does
24 Syngenta understand -- or in the course of you managing your
25 business, which is what I want to ask you about, does that

1 right to -- that exclusive right also relates to offering to
2 sell and importing products?

3 A. That's correct.

4 Q. Are generic companies subject to the same regulatory
5 requirements that you discussed earlier, the process that
6 Syngenta goes through in terms of getting registrations and
7 labels?

8 A. Yes. Any company that's going to sell an active
9 ingredient must go through the same type of process in order to
10 get a registration and be legal to sell the product, yes.

11 Q. To your knowledge, when did Willowood first begin selling
12 azoxystrobin in the United States?

13 A. To my knowledge -- I started this position in August of
14 2014. One of the first conversations I had with Andrew Fisher
15 was, who was the product lead at the time -- said that, you
16 know, Willowood had entered the market prematurely in July with
17 their first sale, July of 2014.

18 Q. In terms of what -- has Syngenta -- or does Syngenta on a
19 regular basis deal with generics entering the market and deal
20 with products that come off of patents?

21 A. We -- as I indicated earlier, we have been in business
22 since the 1800s. We have many, many products that are off
23 patent and many generic competitors in the space. We have many
24 recent off-patent products that we compete with generic
25 competitors.

1 Q. Did Syngenta expect that there would be significant
2 generic competition for azoxystrobin in 2014?

3 A. Not in 2014, no. We did expect that there would be
4 interest to have a generic offering in the market, as this is a
5 very large selling fungicide. We assumed there would be lots
6 of people that would want to come to market with it, but we did
7 not expect, through the normal course of business, that we
8 would see that product in 2014.

9 Q. Why is that?

10 A. Because of the process that I talked about earlier on
11 regulatory hurdles that have to be overcome. If a patent
12 falls, it takes a fair amount of time to bring a product to
13 market in the proper channels. So we did not expect to see it
14 in 2014.

15 Q. And what are those particular hurdles that you're
16 referring to in terms of what your expectations were?

17 A. So the regulatory hurdles -- typically, in order to get a
18 new product, any new product registered, even if the active
19 ingredient is already registered, the new product will
20 typically take about 12 months to get a registration through
21 the EPA with a formulation that's ready to use.

22 Q. And are you aware of -- you referred to a patent expiring
23 for azoxystrobin. Is that a compound patent?

24 A. That is a compound patent. We have many patents on all of
25 our products that include compound patents, which is obviously

1 the big one, but we have lots of other mixture patents, process
2 patents that we put in place to ensure that we have the
3 opportunity to recoup all the work that goes into bringing a
4 product to market.

5 Q. Did Syngenta or did you in your role -- were you aware
6 that there was a process patent for azoxystrobin even though in
7 February of '14 the compound patent had expired?

8 A. As I said, I was informed of this in August of 2014 soon
9 after Willowood brought their product to market in July.

10 Q. In terms of patents that have expired, did Syngenta -- and
11 I understand you said there could be multiple patents, but I
12 want to just focus on the expiration of a particular patent.
13 Does Syngenta develop strategies and plans to address the fact
14 that a patent is expiring?

15 A. Yes. Certainly we have post-patent strategies for all of
16 our products that are coming to the end of their life cycle,
17 so, yes, we put in strategies to help us to maintain our
18 business even after a patent fall.

19 Q. Why does Syngenta do that?

20 A. Well, you know, we invest quite a bit of money to bring
21 products to market. We don't have an endless supply of new
22 products to bring to market, so we have to stabilize our
23 business. In order do that, we have to put a plan in place so
24 that we don't just collapse the market and lose our
25 opportunity.

1 Q. What do you mean by "collapse the market"?

2 A. As I talked about earlier with the brand ladder decision,
3 collapsing the market would be a lower-priced product coming
4 into the market to offer the same thing that you've been
5 offering and same value proposition at a much lower price.
6 Therefore, the market deteriorates and the opportunity for
7 everybody along the channel is much lower.

8 **THE COURT:** You mean you have to reduce the prices
9 and everybody makes less money? Is that what you're saying?

10 **THE WITNESS:** That's correct.

11 **THE COURT:** Okay. I'm sorry.

12 **THE WITNESS:** That's a better way to say it. Thank
13 you.

14 **BY MR. COUGHLIN:**

15 Q. In terms of your customers -- you talk about the channel.
16 Are you referring to your customers, the distributors and the
17 like?

18 A. Yes, I am.

19 Q. When a patent is set to expire in the future or is
20 approaching, do your customers share concerns with regard to
21 the impact on the market?

22 A. Our customers are very concerned because, as I said, as
23 the price comes down their opportunity to be able to pay for
24 the services that they are providing to their customers is
25 lower because they make less money, so they're certainly

1 challenged to be able to continue to make a margin and stay in
2 business.

3 Q. What about inventory? Do your customers -- when they buy
4 from you, do they -- do distributors hold inventory?

5 A. Yes, they do.

6 Q. So how does that play in in terms of when a patent is
7 going -- or when generics or going to enter a market, what does
8 that do in terms of your customer behavior?

9 A. So it depends a lot on what the generic entry looks like,
10 but the -- typically, with a product like azoxystrobin, there
11 are very high inventories, meaning that the distributors hold a
12 lot of product to be ready for the market before it comes
13 because it is packaged like you see there, in the smaller 2 1/2
14 gallon jugs. They need to have a lot of product sitting in
15 their possession to be able to deliver it timely, so they may
16 hold as much as 50 percent inventory from year to year.
17 Typically what happens is if some generic comes to market
18 offering a lower price they will withdraw from that inventory
19 build. So they'll sell off the product that they have put into
20 their inventory as quickly as they can in fear of a price
21 collapse in the market, and then they'll wait and see what
22 happens as they enter into the next market conditions.

23 Q. If a generic was to enter the market early, would that
24 have an impact on the distributors and their behavior?

25 **MR. TILLER:** Objection. Speculative.

1 **THE COURT:** Overruled. He can answer based on his
2 experience.

3 **THE WITNESS:** Based on my experience if there is an
4 early entry before they expect, the channel goes into turmoil.
5 So you can imagine that the -- typically, if they're used to
6 making a decision on a normal procedure and they're expecting
7 something to happen one way and then something completely
8 different happens, they are going to go into a panic mode and,
9 therefore, they will take actions to protect themselves. So in
10 this case, they will take actions to sell off inventories and
11 make sure that they're not in a position that will be damaging
12 to them.

13 Q. In terms of Syngenta's post-patent strategies, is it sort
14 of one size fits all or does it depend on the particular market
15 and particular products?

16 A. Yeah. So we have a guideline that we use for all of our
17 post-patent strategies, but certainly we look at each
18 individual situation, each market understanding what the
19 products do and then build the strategy based on that. So it's
20 not a one size fits all, but it is a guiding principle that we
21 use across the business.

22 Q. And are there particular people who are involved or
23 responsible for developing or managing post-patent strategies
24 within the company?

25 A. Yeah. So my team is responsible for post-patent

1 strategies. I have a specific team that reports to me that is
2 responsible for post-patent activities. It's a business
3 development and third-party team that looks after our
4 post-patent strategies.

5 Q. Who was in charge of post-patent or involved in
6 post-patent strategies as it relates to -- I'll talk I guess
7 first about the compound patent and then the process patent,
8 which lasted almost two years longer; and if they are different
9 people, different teams, explain that, please.

10 A. Obviously, the product manager has a responsibility for
11 that as well. So in this case, Andrew Fisher would be one of
12 the responsible parties, but the person directly responsible
13 for it would have been Rex Wichert, who is -- was in our
14 third-party business development team at that time, and he's --
15 in his previous life, he had been the azoxystrobin brand
16 manager as well, so he's quite well-versed in this product.

17 Q. Is post-patent strategy sometimes referred to as life
18 cycle management?

19 A. Correct.

20 Q. And that's managing the life cycle of a product
21 development through post -- when it is no longer subject to a
22 patent?

23 A. Yeah. So a product life cycle management is a normal part
24 of business. Life cycle management is just referring to the
25 product enters when it's discovered. It goes through all the

1 process for development. Then it goes into a growth stage.
2 This is normally under patent. It goes into maturity. At
3 maturity then it's typically when you start to think about your
4 post-patent activity, so what's going to happen later on and
5 how you protect it in a post-patent environment; and then it
6 goes into a state of decline or into a more stable environment
7 depending on the product and what it delivers.

8 **THE COURT:** When we -- tell me when you get to a
9 stopping point since it would normally be break time pretty
10 soon. A couple more questions?

11 **MR. COUGHLIN:** Five minutes, I think.

12 **THE COURT:** Okay.

13 **MR. COUGHLIN:** Is that okay, Judge?

14 **THE COURT:** Yes.

15 **MR. COUGHLIN:** I have more than that, but if I
16 can have five minutes on this line of questioning.

17 **THE COURT:** That's what I am asking. I'm inviting
18 you to tell me when to stop in the next few minutes.

19 **MR. COUGHLIN:** All right.

20 **BY MR. COUGHLIN:**

21 Q. In terms of -- you said stabilize. The life cycle of
22 humans, you know, it has an absolute end. With products, the
23 life cycle management -- or you go through the transition and
24 it stabilizes and those products continue to sell and be
25 ongoing active products.

1 A. There is -- different products respond in different ways.
2 We have products that are replaced by new technologies that
3 then just find their way on the shelf somewhere. We have
4 products that are still very viable that stay in the market for
5 a long time, so their life cycle exists for many, many years.
6 We have products that have been in our portfolio for 50 years
7 that are still delivering a very good value to the market. So
8 there is, you know, differences in the way the products are
9 accepted. A product like azoxystrobin that is as big a
10 molecule as it is and as high demand as what it is, it will
11 have a useful life of many, many years.

12 Q. In terms of the other times -- when you said that life
13 cycle management is not unique to -- it's in every business you
14 are referring to. It's not just a crop protection --

15 A. It a very common marketing term you'll learn in any
16 business school.

17 Q. In terms of the experience you've had with other products
18 that have come off of patent, typically what has been your
19 experience as to how long after product comes off patent that
20 generic competition comes into market in any significant way?

21 **MR. TILLER:** Objection. Relevance.

22 **THE COURT:** Overruled.

23 **THE WITNESS:** So that's dependent on the business.

24 Obviously, in a highly regulatory, highly regulated space like
25 we're in, there is a very standard process for how long it

1 takes to bring a product to market; and as I said earlier, the
2 EPA requires about a 13 -- 12- to 13-month process in order to
3 get a registration in place for a duplicate product. So
4 typically it takes something like 12 to 13 months to bring a
5 product into the space.

6 Q. Has that been your actual experience with other products
7 that have come off of patent?

8 A. That has been my experience, yes.

9 **MR. COUGHLIN:** This is a fine time, Your Honor.

10 **THE COURT:** All right. Ladies and gentlemen, we'll
11 stop for the afternoon break. I'll ask you to be back in 15
12 minutes. That's about 3:35. Please remember not to talk about
13 the case among yourselves or with anyone else and avoid contact
14 with anyone in the courtroom and I'll see you back in 15
15 minutes. Leave your notes in your chair.

16 (At 3:20 p.m., jury excused.)

17 **THE COURT:** How much longer are you anticipating on
18 direct?

19 **MR. COUGHLIN:** Probably 20 minutes, Your Honor.

20 **THE COURT:** Okay. Thank you.

21 Is there anything that you all want to take up?
22 For some reason, even though the mic is not picking
23 Mr. Neuman up very well, something is picking up the folks
24 over here. So if you all can minimize the whispering,
25 that would be much appreciated.

1 Okay. We'll take a 15-minute recess.

2 (At 3:19 p.m. break taken.)

3 (At 3:36 p.m., break concluded.)

4 **THE COURT:** Okay. Anything we need to do before the
5 jury comes in? No? All right. You can bring the jury in.

6 (At 3:36 p.m., jury panel present.)

7 **THE COURT:** I think we're ready to continue direct
8 examination so, Mr. Coughlin, you may proceed.

9 **MR. COUGHLIN:** Thank you, Your Honor.

10 **BY MR. COUGHLIN:**

11 Q. Mr. Cecil, we were discussing life cycle management,
12 post-patent strategies that Syngenta has in the management of
13 its various products. Can you talk a little bit about the
14 timing in terms of the various things that can be done to
15 manage that life cycle and how timing plays into that?

16 A. Sure. So from a life cycle management point of view, we
17 put together a strategy, you know, as early as we can in the
18 life cycle of the product, when you start to have a feel for
19 how big it is or what the size of the opportunity is.

20 The things that are generally in relation to that -- the
21 strategy is generally you put together a fighting brand
22 opportunity. So we talked about fighting brands on the brand
23 ladder so, you know, what does that look like. You put
24 together pricing strategy for post-patent. What is it going to
25 look like? You put together the right incentives for your

1 customers to make sure that they have an opportunity to see,
2 you know, what their opportunity in the life cycle management
3 is.

4 And those are things that you generally do towards the end
5 of the life cycle, and the timing is really critical in not
6 devaluing the market that we talked about earlier. If you
7 implement any of these things too early before there's a
8 competitor in that space, then you risk deteriorating your own
9 market.

10 Q. In terms of timing of implementing these various things,
11 how does that match up with or affected by the timing of when a
12 generic comes to market?

13 A. Yeah. So, generally speaking, we try to release most of
14 our post-patent tools at the time of the generic entry into the
15 marketplace.

16 Q. So in terms of azoxystrobin, I think you indicated that it
17 was not an expectation of significant generic competition in
18 2014, is that right?

19 A. That's correct.

20 Q. So in the general course, if things went the way they
21 normally would, or you expected them to go, when would you have
22 expected significant generic competition?

23 A. We would have expected to see the first generic entry in
24 early 2015 some time. The patent for -- the AI patent for
25 azoxystrobin would have expired in February of 2014. We would

1 have expected that to be about 12 months later we would see
2 somebody in the marketplace.

3 Q. And that's assuming that --

4 **THE COURT:** Pardon me.

5 **BY MR. COUGHLIN:**

6 Q. That's assuming that -- because your process patent was
7 still in place, that would be assuming somebody could develop a
8 process to come to market that didn't infringe your process
9 patent, is that right?

10 A. That's correct.

11 Q. Okay. And if somebody wasn't able to develop their own
12 process that didn't infringe the process patent, when would you
13 expect the first generic entry of significance in that event?

14 A. Some time mid- to late-2015, most likely.

15 Q. I'm talking about the process patent that expired in
16 December of '15.

17 A. Right.

18 Q. Assuming that that -- assuming somebody else could not
19 develop their own process to manufacture azoxystrobin
20 commercially that didn't infringe -- in a way that didn't
21 infringe the '138 patent, when would Syngenta have expected the
22 first significant generic competition after that expiration in
23 December of '15?

24 A. I'm sorry, I didn't understand your question. The
25 12-month process would have been the same, depending on which

1 patent you talked about, so if they were able to actually
2 import product under -- without a patent in place, they would
3 have had 12 months after that to develop and register a
4 product. So if it -- if the patent was off in December of '15,
5 we would have expected it something like 12 months after that.

6 Q. And I think you testified earlier that, to your knowledge,
7 the first sale of azoxystrobin by Willowood was in July of
8 2015.

9 A. Yes, it was.

10 Q. When did -- when was Syngenta able to come to market with
11 its fighting brand?

12 **THE COURT:** July of what year did you say?

13 **THE WITNESS:** 2014.

14 **THE COURT:** 2014.

15 **BY MR. COUGHLIN:**

16 Q. I may have misspoke. Yes, July of 2014.

17 A. Yes.

18 Q. So when did Syngenta come to market with its azoxystrobin
19 fighting brand?

20 A. That would have been launched in 2015 for the market year,
21 so it would have been some time in the April time frame.

22 Q. I'm going to ask you to look at Demonstrative 8, the brand
23 ladder we were looking at before. Does that brand ladder
24 reflect Syngenta's fighting brand for azoxystrobin?

25 A. Yes, it does.

1 Q. And what's the name of that fighting brand?

2 A. Aframe is our fighting brand for the straight goods
3 azoxystrobin, which would have been the first one that we
4 launched; Aframe Plus is the mixture, which would have been the
5 second one.

6 Q. And when Syngenta came to market with Aframe and Aframe
7 Plus, its fighting brands, did it have to go through a
8 regulatory approval process to be able to get labels to sell
9 its fighting brand?

10 A. Yes, it does.

11 Q. Did it do that?

12 A. Yes.

13 Q. According to the regulations?

14 A. Yes, it did.

15 Q. Now, in terms of a next generation brand, I think you
16 testified that a next generation's another way to address -- I
17 don't know what the right phrase you used before -- managing
18 the brand in dealing with generic competition, how does --
19 again, without repeating yourself, how does a next generation
20 brand help in managing the brand for a compound like
21 azoxystrobin?

22 A. So what it does is the Trivapro in this scenario is an
23 addition of another fungicide, which adds value for the disease
24 control that the farmer is trying to accomplish, and so what it
25 does is it moves up the price brand ladder, the value for the

1 customer. It moves that up, and so it basically gives a new
2 space to compete in. It effectively gives a whole different
3 group of grower customers to talk to about products that bring
4 a different value creation.

5 Q. When you say "value creation," I know -- I think you're
6 talking about price in some way --

7 A. Yeah.

8 Q. -- but you're also talking about added benefit of the
9 products themselves, the innovation, is that correct?

10 A. Right. So really value creation in this reference is
11 talking about what it adds for the customer, and so does he get
12 more disease control? Does he get something in addition to
13 what he would have gotten with the established brand?

14 Q. When -- when was Syngenta able to introduce Trivapro, its
15 next generation premium brand? When was that? When did that
16 happen?

17 A. We launched Trivapro to the market 2016, as soon as we
18 received registration.

19 Q. And did that also have to go through the registration
20 process that you discussed earlier?

21 A. Yes, it did.

22 Q. If Willowood had not entered the market -- and when I say
23 entered the market, I'm talking about selling into the market,
24 not starting to sell, or not starting the process -- but if
25 they had not actually entered the market until 2015, what would

1 have been different in terms of Syngenta's implementation of
2 these different strategies for its own brands?

3 A. So we would have been ready to launch our Aframe fighting
4 brands to the market at the same time, so we would have been
5 able to hold value much better for the customer there; but,
6 more importantly, we would have been able to launch our
7 Trivapro brand, our Solatenol-based products, in a much higher
8 position into the marketplace.

9 As I talked about earlier, the brand ladder is affected
10 greatly by the low end pulling the prices down. That means
11 that you can't price your top end as high, so there's certainly
12 an effect that happens by devaluing the market before you
13 launch that product, you'd launch it at a lower price.

14 Q. In terms of the different rungs of the ladder, when
15 Syngenta did not have a fighting brand in the -- for the 2014
16 season, what impact did that have on its established brands,
17 it's Quadris, in terms of pricing in '14 or '15?

18 A. So what it really did was it put us on the defensive
19 position of having to lower our price on our brands versus
20 lowering our price on our fighting brands -- or through a
21 fighting brand. And so, what that does is it devalues that --
22 that brand. So, if a customer bought it at a lower price
23 because we had to compete with a generic, they're likely not to
24 spend the same -- you'll never go back to that higher price.
25 You'll have to stay at the lower price for -- for the duration.

15 1 Q. You used the word "turmoil" before.

15 2 A. Yes.

15 3 Q. And I think you were talking about a time in which you
15 4 assumed your role in August of 2014?

15 5 A. That's correct.

15 6 Q. Describe that more. What were you referring to? I think
15 7 you mentioned, in speaking with Mr. Fisher, that there was
15 8 turmoil. What were you referring to?

15 9 A. So our customers are like anybody else. When they're
15 10 having to make buying decisions, they're doing it based on
15 11 assumptions. They're understanding that there is a regulatory
15 12 process. There is certain things that will happen in the
15 13 market. There are patents in place that companies will defend
15 14 to protect the value in the market.

15 15 When those things become false assumptions, that they can
15 16 no longer depend on that timeline, that 12 months that we
15 17 talked about, they have to go into a situation of managing an
15 18 unknown situation. So they don't have an understanding of what
15 19 timelines are, of what's going to happen. So, therefore, they
15 20 have to protect themselves. So that's the turmoil that I'm
15 21 talking about. Customers are dealing with big businesses that
15 22 they can't afford to not understand the assumptions that are
15 23 going to happen to them or with them, and therefore, they go
15 24 into a state of chaos, so to speak.

15 25 Q. When -- when you talked about coming in in August and this

15 1 turmoil, what was your understanding of when the turmoil or
15 2 when or how the turmoil began in the marketplace?

15 3 A. So my understanding was that there was a little bit of a
15 4 heads-up early in the year that -- from Willowood to its
15 5 customers to say that we are going to launch this product for
15 6 2014. Most of the customers said, well, that doesn't fit the
15 7 timelines, it doesn't make sense. The patent will come off in
15 8 February; it'll take longer. So they felt very comfortable
15 9 that that's probably not going to happen.

15 10 And then, when they did start selling product in July,
15 11 they were very worried about what was going to happen because
15 12 they certainly didn't expect it at that point.

15 13 Q. But was it your understanding that, in fact, the
15 14 discussion going out, the customers hearing early in the year
15 15 that Willowood was coming to market for the 2014 season, had an
15 16 effect on the customers' behavior?

15 17 A. Certainly, they were --

15 18 **MR. TILLER:** Objection.

15 19 **THE COURT:** I'm sorry. Could you just ask the
15 20 question again?

15 21 **BY MR. COUGHLIN:**

15 22 Q. What was your understanding in terms of the effect of
15 23 Willowood having gone out into the marketplace, telling
15 24 distributors, customers that it was coming to market for the
15 25 2014 season?

1 **THE COURT:** Okay. You're asking about something that
2 happened before he was involved.

3 **MR. COUGHLIN:** I'm asking about his understanding of
4 when he assumed the role in '14 and he was talking to Andrew
5 Fisher about the market.

6 **THE COURT:** All right. Sustained.

7 **BY MR. COUGHLIN:**

8 Q. You talked about lowering prices. Are there other things
9 that Syngenta did once you were there to try and deal with the
10 fact that Willowood had come to market and actually sold
11 product in July of '14?

12 A. So we immediately took actions to ramp up our fighting
13 brand activities to make sure that we had those available as
14 quickly as we could. We took actions with our distributors to
15 make sure that we had incentive programs in place to help them,
16 which is actually lowering price through a different mechanism.
17 And then, we had to start thinking about selling to third-party
18 customers.

19 By third parties, we talked a little bit about technical
20 formulations earlier. Third parties would be somebody that
21 would buy the product and formulate it for themselves. And so,
22 we had to do all of those things to try to stabilize our
23 situation.

24 Q. When you assumed your role in August of 2014, did you have
25 any knowledge or any familiarity as to whether any other

1 generics had imported azoxystrobin products into the United
2 States?

3 A. There was two other companies at the time that had shown
4 imports of product to the US. Cheminova was one that showed an
5 import. And Albaugh Chemical was another that showed imports.

6 Q. I'd like to break them up if I could --

7 A. Sure.

8 Q. -- and ask about the two of them. In terms of Cheminova,
9 what is your understanding of their import or what their
10 products were that they could -- they could offer into the
11 marketplace?

12 A. So they were looking to offer similar products into the
13 market as well azoxy-based products. The difference in their
14 imports was based on the registration that we talked about
15 earlier, and so their registration was based on crops outside
16 of corn. So they would be able to come into the market, but
17 not into the corn space.

18 Q. So how does that affect, in terms of the impact on either
19 Syngenta or Syngenta's customers, the fact Cheminova may have a
20 supply of azoxystrobin, but their label was -- did not allow
21 them to sell or their farmers to apply that to a corn crop?

22 A. Yeah. So the crops outside of corn are typically the
23 higher-priced crops, so you have vegetables, you have
24 specialties like citrus and fruit crops that are high-value
25 crops. They price those products much higher in those crops.

1 So, the reality was, corn is such a big player in the
2 market, it is the crop that we base all of our pricing on. So,
3 therefore, if it's not going to be sold into corn, it has much
4 lower impact on our overall business.

5 Q. Would it have any impact on your customers?

6 A. And certainly the same impact for customers. So if the
7 price is not impacting corn, it will likely not be a major
8 factor for the market for them, either.

9 Q. Based on your experience when you joined that position in
10 August of 2017 [sic], and then managing it through today, did
11 Cheminova's supply or importation adversely affect Syngenta in
12 2014?

13 A. Yeah, so I joined that position in August of 2014, not --

14 Q. I'm sorry. I apologize.

15 A. If you would ask the question again.

16 Q. Based on your -- you came in in August of 2014, and you've
17 held that position to date. Based on your experience, did
18 Cheminova, having a generic product but without label that
19 allowed the use of corn, impact Syngenta in its business in
20 2014?

21 A. No impact to our business overall, no.

22 Q. How about the second generic you made reference to?

23 A. So Albaugh Chemical was -- it's a very small generic
24 company that they got registrations for a seed care
25 application. We talked about seed care earlier being an

15 1 exceptionally small part of the business.

15 2 What I didn't say about that business is it's also an
15 3 exceptionally high-priced part of the business. So, you know,
15 4 they were going enter into a space that was very small, number
15 5 one. And number two, it's a much higher price than the corn
15 6 market. So it's definitely not one that we were overly
15 7 concerned about.

15 8 Q. Did Albaugh's supply or the ability to supply for seed
15 9 care impact Syngenta in 2014?

15 10 A. No, they did not.

15 11 Q. Did Cheminova, at some point, get a registration for a
15 12 label that would allow it to sell for corn?

15 13 A. Yes, they did, but they have not sold any. In fact,
15 14 they've withdrawn from the market.

15 15 Q. Do you know when that registration issued?

15 16 A. No, I would have to look. I'm sorry.

15 17 Q. Do you know when they withdrew from the market?

15 18 A. I believe 2016.

15 19 **MR. COUGHLIN:** That's all I have, Your Honor, at this
15 20 time.

15 21 **THE COURT:** All right. Questions for Willowood?

15 22 **MR. TILLER:** Thank you, Your Honor. Good afternoon,
15 23 Mr. Cecil.

15 24 **THE WITNESS:** Good afternoon.

15 25 **MR. TILLER:** Good to see you again. This is not easy

1 with my computer sitting here.

2 CROSS-EXAMINATION

3 **BY MR. TILLER:**

4 Q. Mr. Cecil, you said you are involved in the budgeting
5 process, correct?

6 A. Yes, I am.

7 Q. And you said that Syngenta lives by its budgets, right?

8 A. That's correct.

9 **MR. TILLER:** Your Honor, may I show the witness
10 Defendant's Exhibit 252?

11 **THE COURT:** All right.

12 **MR. TILLER:** And I'd like to move for its admission.

13 **THE COURT:** It'll be admitted.

14 **MR. TILLER:** May I publish it?

15 **THE COURT:** You may.

16 **MR. TILLER:** Do you have the second page, Bonnie?
17 Can you blow up that chart to everybody can see it? Of course,
18 I don't have my notes. Found them.

19 **BY MR. TILLER:**

20 Q. Mr. Cecil, these are the budgeted sales and actual sales
21 for azoxystrobin from 2009 to 2016. Do you see that?

22 **THE COURT:** Are you asking him or are you telling
23 him?

24 **BY MR. TILLER:**

25 Q. The title is "2009 to 2016 Azoxystrobin Sales and Gross

1 Profit." Do you see that?

2 A. Yes, I do.

3 Q. Okay. In two -- and these -- all these numbers are in
4 thousands, correct?

5 A. Yes.

6 Q. Okay. So in 2009, Syngenta's budgeted sales for
7 azoxystrobin was \$249,812,000, correct?

8 A. It appears so.

9 Q. And its actual sales that year were \$151,966. Do you see
10 that?

11 **THE COURT:** Uh, what, say that --

12 **BY MR. TILLER:**

13 Q. 151 million -- I'm sorry. \$151,966,000, do you see that?

14 A. Yes.

15 Q. So Syngenta's budget that year was off by approximately
16 \$98 million. Do you see that?

17 A. Yes, I do.

18 Q. That is about -- it was about 40 percent off that year in
19 2009, correct?

20 A. Quick math, yes.

21 Q. Okay. And its budgeted gross profit -- and gross profit
22 would be revenue minus cost of goods sold?

23 A. Yes.

24 Q. Okay. Its budgeted gross profit was \$173,865,000 that
25 year, correct?

1 A. Yes.

2 Q. And its actual gross profit was \$105,801,000, correct?

3 A. Yes.

4 Q. That, too, is off by about 40 percent, correct?

5 A. Yes.

6 Q. Let's look at 2010. Let me ask you, do you know why
7 Syngenta was off that year?

8 A. I have a pretty good idea, yeah.

9 Q. Okay. And what was it?

10 A. 2009 through 2011, as I remember, was a pretty good
11 recession, and it was certainly hard to project anything,
12 including gas prices or something as simple as buying your
13 groceries. It was pretty hard to project what the farmer was
14 going to buy at that point.

15 Q. So, things like gas prices can affect sales of
16 azoxystrobin then?

17 A. No. I think the general economy can affect things like
18 azoxystrobin.

19 Q. Fair enough. The general economy can affect things like
20 azoxystrobin, correct, the sales of azoxystrobin?

21 A. Absolutely.

22 Q. Okay. 2010, similarly, we'll look at -- budgeted sales
23 were \$198,946,000. Do you see that?

24 A. Yes.

25 Q. And actual sales were \$121,305,000, correct?

1 A. Yes, sir.

2 Q. That is about 39 percent off that year, correct?

3 A. Yes.

4 Q. And in that same year, your profits -- gross profits were
5 about 50 percent off. Do you see that?

6 A. I do.

7 Q. Okay. In 2011, it looks like -- 2011, budgeted sales were
8 137,651,000, and actual sales were 191,697,000. So, actually,
9 your budget was under that year, but, it was still off by
10 38 percent, correct?

11 A. That's correct.

12 Q. Sales that year were approximately 40 percent off as well,
13 correct?

14 **THE COURT:** You mean -- are you asking about profits
15 or --

16 **BY MR. TILLER:**

17 Q. I mean, I'm sorry, profits. Profits were about 40 percent
18 off that year, correct?

19 A. Looks like it.

20 Q. Okay. And the downturn in the economy, I believe, started
21 in 2007.

22 A. Okay.

23 Q. Okay.

24 A. You don't have 2007 on the list.

25 **THE COURT:** Okay. Well, counsel won't testify. Ask

16 1 questions, please.

16 2 **BY MR. TILLER:**

16 3 Q. Was the downturn in the economy -- didn't it start in
16 4 2007?

16 5 A. I don't remember when the downturn was --

16 6 Q. Okay.

16 7 A. -- but I would assume that's probably right.

16 8 Q. Now, in 2012, it looks like for gross profits -- no, I'm
16 9 sorry, sales. Sales were about 6 percent off, do you see that?

16 10 A. Yes.

16 11 Q. Or about \$14 million?

16 12 A. Uh-huh.

16 13 Q. And profits, actually, were pretty close. They were about
16 14 \$4 million off, do you see that, in 2012?

16 15 A. I do.

16 16 Q. 2013, which there's still no generic competition in 2013,
16 17 correct?

16 18 A. No.

16 19 Q. The actual sales were off by about \$33 million?

16 20 **THE COURT:** Are you asking him?

16 21 **BY MR. TILLER:**

16 22 Q. Were the actual sales off by about \$33 million?

16 23 A. According to this chart, yes.

16 24 Q. Okay. And were the actual profits off by about
16 25 \$31 million?

1 A. According to this chart, yes.

2 Q. Now, I've added it up, and I'm happy if you'd like to -- I
3 have a calculator here if you want to add it up and check my
4 numbers. But, from 2009 to 2013, Syngenta budgeted sales of
5 1 million -- \$1,081,000,719. Would you like to check me on
6 that or --

7 A. I'll trust you.

8 Q. Okay. And, again, I'm happy to have you check it. But,
9 for those five years, would you agree that the actual sales
10 were \$912,547,000? Does that look about right?

11 A. Yes.

12 Q. Okay. That's a difference in those five years, in the
13 five years leading up to any generic competition -- again, I'm
14 happy to give you a calculator, but the difference is about
15 \$170 million that over that five-year period, Syngenta was off
16 in its azoxystrobin budgets. Would you agree with that?

17 A. It looks so.

18 Q. Okay. Looking at gross profits for those five years, the
19 budgeted gross profits, would you agree, are \$716,565,000?

20 **MR. COUGHLIN:** Your Honor, he's not showing him -- I
21 mean --

22 **MR. TILLER:** I'm happy to show him a calculator.

23 **THE COURT:** Okay. Well --

24 **MR. TILLER:** It's just, I've done the math.

25 **THE COURT:** Okay. Well, you don't get to testify.

16 1 **MR. TILLER:** I understand that.

16 2 **THE COURT:** So let's -- you can hand him the

16 3 calculator if you want and ask him questions. You can ask him
16 4 if he agrees. Just don't testify.

16 5 **BY MR. TILLER:**

16 6 Q. Would you agree that the budgeted gross profits for 2009
16 7 to 2013 are \$716 million?

16 8 A. I would agree that the sheet that you put in front of me
16 9 before I started in the position in 2014, that the budgets were
16 10 off every year, yes.

16 11 Q. This is a Syngenta document. I presume you would -- do
16 12 you agree that it likely accurately reflects the budgeted sales
16 13 versus actual sales?

16 14 A. I have no reason to disagree with that, but I was not in
16 15 the position at that point.

16 16 Q. Okay. Now, the difference -- you agreed with me that the
16 17 difference in budgeted sales versus actual sales for that
16 18 5-year period was \$170 million. Are you aware that -- are you
16 19 aware that Syngenta is asking for \$75 million of damages in
16 20 this case?

16 21 A. Yes, I am.

16 22 Q. And its calculations are based on the azoxystrobin
16 23 budgets, correct?

16 24 A. Yes, they are.

16 25 Q. Okay. Let's look at some of the mesotrione budgeting.

1 And, again, when did you start in the position that you're in
2 now?

3 A. 2014, about a month after you came to market with your
4 product.

5 **MR. TILLER:** Let's look at -- and these are very hard
6 to read, Plaintiff 110A please, Bonnie. If you could scroll
7 down to the one, two, three, fourth, fifth page where it says
8 mesotrione. Right there, you just passed it.

9 Okay. In the third column under Callisto -- you have
10 it -- I don't need that. In the gross sales column, 2014
11 budget, \$64,986,000. Right there. You have it.

12 **THE COURT:** What's your question?

13 **MR. TILLER:** I haven't asked the question yet. I'm
14 just trying to get Bonnie to highlight it. I'm sorry.

15 **BY MR. TILLER:**

16 Q. Mr. Cecil, would you agree with me that Syngenta's 2014
17 budget for Callisto -- and Callisto's a mesotrione product,
18 right?

19 A. Yes, it is.

20 Q. It's a straight mesotrione product, correct?

21 A. Yes, it is.

22 Q. Okay. The 2014 budget for Callisto, would you agree with
23 me, is \$64,986,000?

24 A. It appears so.

25 **MR. TILLER:** Bonnie, if we could go to Plaintiff's

1 123A, please. And if you could go down to mesotrione again,
2 and if you could highlight -- so, first of all, could you go to
3 the --

4 **BY MR. TILLER:**

5 Q. The third column is 2014 actuals. Do you see that,
6 Mr. Cecil?

7 A. Yes.

8 Q. Okay. Looking at the third column for gross sales of
9 Callisto, actual sales in 2014 were \$49,384,000. Do you see
10 that?

11 A. I do.

12 Q. That difference -- and I can have Bonnie show it to you
13 again if you want -- the budget was approximately \$65 million;
14 the actuals were approximately \$49 million, so would you agree
15 with me that the difference -- that Syngenta was off by about
16 \$16 million?

17 A. Yes.

18 Q. And \$16 million would represent about a 25 percent
19 difference, would you agree?

20 A. Yes.

21 **MR. TILLER:** Bonnie, please go down to 110A. If you
22 could go down to Callisto Xtra, please. It's right there on
23 the bottom.

24 **BY MR. TILLER:**

25 Q. Again, looking at the third column is the 2014 budget,

1 would you agree with me -- and Callisto is also -- Callisto
2 Xtra is also a mesotrione product, correct?

3 A. Yes.

4 Q. Okay. The gross sales budget in 2014 for Callisto Xtra,
5 would you agree with me, is \$17,911,000?

6 A. Yes.

7 **MR. TILLER:** Okay. Bonnie, could we go back to 123A,
8 please. Go down to Callisto Xtra.

9 **BY MR. TILLER:**

10 Q. Would you agree with me -- and, again, looking at the
11 third column, would you agree with me that that's 2014 actuals?

12 A. Yes, it is.

13 Q. And would you agree that the actual sales for Callisto
14 Xtra in 2014 was \$14,130,000?

15 A. Yes.

16 Q. So would you agree with me that the difference between the
17 budgeted Callisto Xtra sales and the actual Callisto Xtra sales
18 for 2014 was approximately \$2.8 million?

19 A. Yes, I would.

20 **MR. TILLER:** Now, when -- you can close that. Thank
21 you, Bonnie.

22 **BY MR. TILLER:**

23 Q. You talked about the latest plans, the LPs?

24 A. Yes.

25 Q. And, again, I just want to make sure I understood what you

1 said, that the LPs are done monthly as Syngenta sort of looks
2 to see how it's doing each month compared to its budgets,
3 correct?

4 A. Correct.

5 Q. Okay. Do you know why the LPs were lowered in 2014 in
6 January and then in February? Let's start with in January.
7 The LP was lowered from the budget, so the total gross profit
8 budget of azoxystrobins was lowered in January of 2014. Do you
9 know why?

10 A. Yeah, I mean, it's a bit of speculation because I was not
11 in the role yet. I started in August. However, the first
12 rumors of Willowood coming to market came, as I said earlier,
13 in January/February. That was when the customers first started
14 hearing it.

15 So what typically happens in that scenario is the turmoil
16 that I discussed goes through our sales organization who puts
17 in a forecast, and they're going to have a knee-jerk reaction
18 to pull the sales down.

19 Q. So it was simply based on a rumor that Willowood was going
20 to enter the market?

21 A. That's the best speculation I can make, yes.

22 Q. Okay. Do you know what information led to the lowering of
23 the February LP from the January LP?

24 A. I assume it's continued turmoil. I was not in the role at
25 that time, so I can't answer.

1 Q. Okay. I understand. I'm just trying to understand what
2 Syngenta's understanding of this was. So you don't know why
3 each LP in 2014, from January to June, was lowered?

4 A. I'm not even sure that they were, however, I was not
5 there. It's not normally something I would do to go back and
6 research every month why before I got into a position so, no, I
7 don't really know.

8 Q. But you believe there was a rumor that Willowood would be
9 getting into the market?

10 A. Yes. I know that there was.

11 Q. Okay. Who did you hear this from?

12 A. I heard it from multiple customers, but Andrew Fisher was
13 probably the one that told me first.

14 Q. And what did they tell you? Did they tell you how -- what
15 types of products Willowood would be coming into the market
16 with?

17 A. So Andrew told me in one of my first meetings with him
18 that there was rumors in the field that in January/February
19 time frame that Willowood would be entering the market for the
20 2014 season.

21 Q. Willowood did not enter the market for the 2014 season,
22 correct?

23 A. They entered the market in July of 2014 for the season,
24 yes.

25 Q. You're not aware of any significant sales in 2014, are

16 1 you?

16 2 A. Well, we talked a little bit about post-patent strategy a
16 3 few minutes ago. If you were to read all of my post-patent
16 4 strategy documents across the company, one of the statements
16 5 you would find in there multiple times would be generic entries
16 6 rarely affect volume, they mostly affect price. And what that
16 7 means is the first price to market with a generic entry will
16 8 lower the overall market. It will pull the brand ladder down,
16 9 and it will make it harder to compete.

16 10 It will not necessarily get big volume. Because of the
16 11 industry we're in, we have a channel that needs to support the
16 12 logistics to get to the field and, therefore, a generic has a
16 13 hard time finding a path to market, so the volumes may be low,
16 14 the price becomes very low and very difficult.

16 15 Q. How far down did Willowood lower the price?

16 16 A. How far down --excuse me?

16 17 Q. How far below the price of Syngenta's price was
16 18 Willowood's?

16 19 A. Approximately 15 percent.

16 20 Q. And how far below Syngenta's price was Cheminova's price?

16 21 A. I do not know.

16 22 Q. Okay.

16 23 A. They were not a factor in the market.

16 24 Q. They were not a factor in the market. Let's take a look
16 25 at Defendant's Exhibit 21.

16 1 **MR. TILLER:** Can I get 21, please.

16 2 Your Honor, may I approach and show the witness
16 3 Exhibit 21?

16 4 **THE COURT:** Yes. You may.

16 5 **MR. TILLER:** I'd like to move for it's admission.

16 6 **MR. COUGHLIN:** No objection.

16 7 **THE COURT:** It'll be admitted.

16 8 **MR. TILLER:** Could you -- it's all on the first page.
16 9 Look at the 2014 -- strike that.

16 10 **BY MR. TILLER:**

16 11 Q. Mr. Cecil, do you see that this document represents the
16 12 2011 to 2015 year-to-date azoxystrobin imports?

16 13 A. Yes, I do.

16 14 Q. And this is as of February 2016?

16 15 A. Yes.

16 16 Q. Looking at the 2014 numbers -- 2014, please, Bonnie.
16 17 Thank you -- you'll see here that Cheminova, with its Equation
16 18 and Azaka products, imported approximately --

16 19 **THE COURT:** I don't think anybody can see that.

16 20 **MR. TILLER:** Nobody can see that? Okay.

16 21 **THE COURT:** Well, I can't. I don't know. Can you
16 22 all see it?

16 23 **MR. TILLER:** Can you focus in on the Cheminova --
16 24 just the Cheminova line, please. Is that better?

16 25 **THE COURT:** Yeah.

16 1 MR. TILLER: Is that better? Sorry.

16 2 THE COURT: Go ahead.

16 3 MR. TILLER: These are really small spreadsheets.

16 4 BY MR. TILLER:

16 5 Q. You will see there that Chem -- would you agree with me
16 6 that Cheminova imported a little over 33 million pounds --
16 7 33,000 pounds of azoxystrobin in June of that year?

16 8 A. No, I cannot.

16 9 Q. Why not?

16 10 A. Because from this import report what I see is Cheminova
16 11 imported 16,000 gallons of product --

16 12 Q. Okay.

16 13 A. -- formulated product because it's called out in a brand
16 14 name. Willowood, for instance, imported technical product,
16 15 42,329. Technical product would probably turn into something
16 16 much, much higher than 16,000.

16 17 MR. TILLER: Well, can we go to the top, Bonnie.

16 18 BY MR. TILLER:

16 19 Q. The exhibit itself says that the numbers are reflected in
16 20 pounds of AI. Do you see that?

16 21 A. I see that.

16 22 Q. And below that -- where it's highlighted, Bonnie -- it
16 23 says sum of pounds of AI. Do you see that?

16 24 A. Okay. I do.

16 25 Q. Okay. But despite the fact that the document itself says

16 1 that all of these numbers are in pounds, you believe that this
16 2 is in gallons?

16 3 A. I do.

16 4 Q. Okay. Now, the 2014 -- strike that.

16 5 Let me ask you: Cheminova you said did not have a
16 6 corn -- was not approved for corn in 2014, correct?

16 7 A. No, it was not.

16 8 Q. But it was approved for corn in 2015, correct?

16 9 A. I believe so.

16 10 Q. And while corn is the primary -- or I think you used the
16 11 term primary. While corn is the primary crop on which
16 12 azoxystrobin is used, it is also used, as you said, on a number
16 13 of others, correct?

16 14 A. That's correct.

16 15 Q. And it's used -- it's sold significantly in the cereals
16 16 market, correct?

16 17 A. It is in the cereals space.

16 18 Q. In the soybean space as well, too?

16 19 A. Correct.

16 20 Q. Okay. And between cereals, soybeans and corn, those are
16 21 the largest row crops that are planted in the United States,
16 22 correct?

16 23 A. Yes.

16 24 Q. Let me show you 87, please.

16 25 **THE COURT:** Defendant's 87?

16 1 **MR. TILLER:** Defendant's 87. I'm sorry, Your Honor.

16 2 May I approach, Your Honor?

16 3 **THE COURT:** You may.

16 4 **MR. TILLER:** Move for admission of Defendant's
16 5 Exhibit 87.

16 6 **THE COURT:** It'll be admitted.

16 7 Go ahead.

16 8 **BY MR. TILLER:**

16 9 Q. Thank you. Mr. Cecil, do you know who Charles Flippin is?

16 10 A. Yes, I do.

16 11 Q. And who is he?

16 12 A. He is currently the head of our business development third
16 13 party team.

16 14 Q. Is that KAM national accounts?

16 15 A. No, at that time he would have been our key account
16 16 manager.

16 17 Q. Key account manager?

16 18 A. Uh-huh.

16 19 Q. Okay. And in this letter dated -- do you see that the
16 20 letter's dated November 17, 2014?

16 21 A. Yes, I do.

16 22 Q. Do you agree with me that this is a letter to Syngenta
16 23 distributors stating that, "In response to competitive offers
16 24 in the marketplace, Syngenta is announcing a 3 percent list
16 25 price increase on Quadris, Quilt Xcel and Quilt and Quadris Top

1 SB." Do you see that?

2 A. I do.

3 Q. And, in fact, Syngenta did have a 3 percent list price
4 increase in November of 2014, correct?

5 A. Yes, we did.

6 Q. Okay. Now, the competitive offers in the marketplace, to
7 which this is responding, were not any offers by Willowood or
8 Albaugh or Cheminova because Syngenta had not seen much, if
9 any, sales by that time, correct?

10 A. We had seen sales from Willowood in July 2014.

11 Q. Do you recall being deposed?

12 A. Yes, I do.

13 Q. And you understood that you were there to tell the truth
14 and answer the questions as truthfully as you could?

15 A. Yes, I do.

16 **MR. TILLER:** Okay. If we could please bring up Cecil
17 deposition, specifically page 195, Bonnie.

18 Your Honor, would you like me to hand him a copy of
19 the deposition or can we read it off the screen? It's up to
20 you?

21 **THE COURT:** It's okay.

22 **MR. COUGHLIN:** I prefer him to have the deposition to
23 make sure he has the context.

24 **THE COURT:** Okay. You can hand it to him.

25 **MR. TILLER:** May I approach?

1 **THE COURT:** You may.

2 **BY MR. TILLER:**

3 Q. Here is page 195. Now, actually, if we go up to -- on
4 page 197, we are talking about this same exhibit that we were
5 just looking at, which I believe was Exhibit 87 -- Defendant's
6 Exhibit 87, the letter from Mr. Flippin raising the price by
7 3 percent.

8 And you will see that I asked a question at page -- at
9 line 5. Do you see where the question is: Looks like in
10 response to competitive offers in the marketplace Syngenta is
11 announcing a 3 percent list price increase on our Quadris,
12 Quilt -- Quilt and Top SB fungicide brands. Do you see that?

13 And you said: I do.

14 Would you agree with that?

15 A. I'm sorry. I was reading your document.

16 Q. I'm sorry. Go ahead if you need to.

17 A. No, please ask.

18 Q. Do you see on page 195 at page (sic) 5 where I asked you
19 that question?

20 A. Yes, I do.

21 Q. Going down, I then asked you: What were those competitive
22 offers in the marketplace that Syngenta was reacting to?

23 And you said: I don't know at this time.

24 Do you see that?

25 A. Correct.

1 Q. Then I asked you: Well, we saw earlier that Cheminova had
2 imported -- had begun importing azoxystrobin in June of 2014,
3 that Willowood began importing in July, and that Albaugh had
4 begun importing in October. Do you believe that the sales of
5 any of those generics were these competitive offers in the
6 marketplace to which this letter is referring?

7 Do you see that question?

8 A. I do.

9 Q. And in response, do you see -- and there is actually a
10 typo here, so I can show you where it was corrected if you
11 want. But your answer is: No, because I don't believe we --
12 the transcript says "sold." The errata sheet corrects it to
13 say "saw." And I can show you the errata sheet. Do you
14 remember noting that there were some typos in the deposition?

15 A. Yes, I do.

16 Q. Okay. I can show you where you made that change.

17 **THE COURT:** Let's move along.

18 **MR. TILLER:** Okay.

19 **BY MR. TILLER:**

20 Q. You answered: No, because I don't believe we saw any
21 sales in the marketplace from these companies until late in
22 2014, if not early 2015.

23 Do you see that?

24 A. I do.

25 Q. And that was correct when you answered the question,

1 correct?

2 A. Yes. It's still correct. I think you have to add to that
3 just a little bit, though. If you read on down in the
4 deposition, what it talks about is that --

5 Q. That --

6 A. You don't want me to answer?

7 Q. No.

8 A. Okay.

9 Q. Thank you. So you did not -- Syngenta did not lower its
10 prices for azoxystrobin in 2015, but in fact raised, raised its
11 prices in 2014, correct?

12 A. No, we did not.

13 **THE COURT:** Okay. I mean --

14 **MR. TILLER:** This is '14. Did I say --

15 **THE COURT:** Okay. But you said two different years.

16 **BY MR. TILLER:**

17 Q. Syngenta did not lower its prices in 2014, but in fact
18 raised it, raised the prices in 2014, correct?

19 A. No.

20 Q. No, it didn't?

21 A. No.

22 Q. So this document is wrong?

23 A. We lowered our overall net prices. The list price is the
24 gross price that we release to our customers. The net price
25 would be including discounts the customers take at the end of

1 the year. The net price was lowered in 2014 in response to
2 Willowood's offer.

3 Q. But not in response to Cheminova's offers?

4 A. No.

5 Q. Not in response to Albaugh's offers?

6 A. No. They were not relevant in the corn market.

7 Q. They were not relevant, okay.

8 Let me show you what has been marked as Defendant's 68.

9 **MR. TILLER:** May I approach the witness, Your Honor?

10 **THE COURT:** You may.

11 **MR. TILLER:** Your Honor, I would move for admission
12 of Defendant's Exhibit 68.

13 **MR. COUGHLIN:** Your Honor, may I take a quick look?
14 It's a thick document.

15 **THE COURT:** Yes.

16 (Pause in the proceedings.)

17 **MR. COUGHLIN:** May we have a sidebar, Your Honor?

18 **THE COURT:** All right.

19 (Bench conference as follows:)

20 **MR. COUGHLIN:** There are portions that refer to
21 petitions to cancel. We object to certain pages of this
22 document coming in because they're subject to the motions in
23 limine.

24 **THE COURT:** Okay.

25 **MR. TILLER:** I wasn't asking questions about that

16 1 page. I can tell you we can --

16 2 **THE COURT:** We can substitute a copy and you all
16 3 agree on the redactions.

16 4 **MR. COUGHLIN:** A related issue on some of these is
16 5 data compensation discussions and demands and is also part of
16 6 our motion in limine, so to the extent they would use data
16 7 compensation, it seems that might need to be redacted.

16 8 **MR. TILLER:** If I've going do that, I'm going to have
16 9 to visit with the Court.

16 10 **THE COURT:** All right. So I'm not going to admit it
16 11 at this time. I'll let you substitute or copy in. You can go
16 12 ahead and ask him questions about it and publish pages that
16 13 don't include that to the jury.

16 14 **MR. COUGHLIN:** Is that the petition to cancel and the
16 15 data comp?

16 16 **THE COURT:** Yes.

16 17 (Bench conference concluded.)

16 18 **THE COURT:** I think we have a technical problem with
16 19 this one, ladies and gentlemen, so they're going to substitute
16 20 a copy later. He's going to ask questions about the pages that
16 21 there is no dispute over.

16 22 **BY MR. TILLER:**

16 23 Q. Mr. Cecil, do you recognize what has been marked as
16 24 Defendant's Exhibit 68?

16 25 A. Yes.

1 Q. And when it says on the front cover that you sponsored --
2 I'll call it this document or maybe -- would you call this a
3 document or a presentation? I just want to make sure --

4 A. It's a document.

5 Q. Okay. When you're the sponsor of it, that means you're
6 offering it to the company?

7 A. That means I am the representative on the Central Steering
8 Committee that is a member that is bringing it forward.

9 Q. Okay.

10 **THE COURT:** So what is this?

11 **THE WITNESS:** This would be a presentation made to
12 our Central Steering Committee on azoxystrobin strategy.

13 **THE COURT:** Okay. Go ahead.

14 **BY MR. TILLER:**

15 Q. Now, looking at page -- strike that. Do you know when
16 this was prepared?

17 A. No. It looks like it would have been early 2015.

18 Q. That was going to be my assumption as well because on the
19 third page, which is 283443, it talks about objectives for
20 2015. Do you see that?

21 A. Yes, I do.

22 Q. Is that what -- or at least that's one of the indicia that
23 leads you to believe it was early 2015?

24 A. It's the first date on the document, yes.

25 Q. Okay. Now, there you'll see on page 283433 (sic) --

1 **THE COURT:** 2834 what?

2 **MR. TILLER:** 443. The third page, Your Honor. I'm
3 sorry.

4 **BY MR. TILLER:**

5 Q. In the left-hand corner, there's a chart there about
6 pricing. Do you see that?

7 A. Yes.

8 Q. And when it says "FB versus Generic Pricing," I presume
9 that means fighting brands versus generic pricing. Am I
10 correct?

11 A. Yes.

12 Q. You'll see there it identifies a range of prices for
13 generic straight azoxystrobin. Do you see that?

14 A. Yes.

15 **THE COURT:** I don't think there is any problem with
16 this part, so you can show it to the jury.

17 **MR. TILLER:** Okay. I'm sorry. That would make
18 sense.

19 **BY MR. TILLER:**

20 Q. So there it looks like Syngenta is monitoring the prices
21 of generics in the marketplace, correct?

22 A. Willowood.

23 Q. Only Willowood?

24 A. That's what it says.

25 Q. It says generics.

1 A. In 2015 when this document was prepared, there was no
2 reason to believe this would show up in a courtroom. Why would
3 I put anything on there other than the company that I see in
4 the market?

5 Q. Okay. We'll see that moving forward.

6 A. Willowood.

7 Q. Looking at the next page, 283444, this is -- would you
8 please explain what this is?

9 A. If you give me a minute.

10 Q. Sure.

11 A. It's an attempt to outline what the opportunity for our
12 customers to make money on a branded product is.

13 Q. Syngenta has loyalty programs with its customers, correct?

14 A. We have what we call our Key AI program, yes.

15 **THE COURT:** Your what?

16 **THE WITNESS:** Key Active Ingredient incentive.

17 **THE COURT:** So Key AI, active ingredient. Okay.

18 **THE WITNESS:** Sorry.

19 **THE COURT:** That's all right.

20 **THE WITNESS:** We forget that we have lots of lingo
21 that nobody else does.

22 **THE COURT:** Everybody has lingo.

23 So go ahead.

24 **BY MR. TILLER:**

25 Q. And here, because we talked about this the last time we

1 met, this is a chart -- you tell me if I'm wrong. This is a
2 chart that summarizes how a distributor would actually lose
3 money if it purchases and sells more than 4 percent of its
4 azoxystrobin sales as being generics. Am I correct?

5 A. That's correct.

6 Q. Okay. So a distributor -- or let's call them a customer.

7 A customer is incentivized to sell 96 percent of its
8 azoxystrobin from -- being acquired from Syngenta, correct?

9 A. It was at that time.

10 Q. It was at that time. So this would allow the distributor
11 to sell 4 percent of its azoxystrobin in generic, correct?

12 A. Correct.

13 Q. But in order for it -- in order for that customer to sell
14 enough generic to make up the difference of the Key AI
15 rebate -- if it went below 4 percent Syngenta or if it bought
16 4 percent generic --

17 **MR. TILLER:** Let me ask it better because I see your
18 confusion, Judge.

19 **BY MR. TILLER:**

20 Q. A retailer would have to transition to a minimum of
21 60 percent of its purchases to generic to break even versus
22 staying with Syngenta, correct? That's what this chart shows.

23 A. That's what the chart would show, yes. The chart would
24 also show that a customer is competing with other of his
25 competitors in the market that may not be in our loyalty

1 program and they would be the ones that would devalue the
2 market.

3 Q. Moving to 283448, do you have that page, sir?

4 **MR. TILLER:** Could you go to that one, Bonnie? If
5 you could, Bonnie, the top left. Yes.

6 **BY MR. TILLER:**

7 Q. Would you agree with me, Mr. Cecil, that this is a summary
8 of Syngenta azoxystrobin pricing versus Willowood generic
9 pricing? That's the title of this page?

10 A. Yes.

11 **MR. COUGHLIN:** If we could get the whole top? It
12 cuts off the title piece.

13 **MR. TILLER:** Okay. I'm sorry.

14 You need to show that. There you go.

15 **BY MR. TILLER:**

16 Q. The first bullet, would you agree --

17 **MR. TILLER:** Bonnie, could you please
18 expand -- Chris, expand the first bullet, please. The whole
19 bullet, please.

20 **BY MR. TILLER:**

21 Q. It says: Generic Willowood and Cheminova and branded
22 competition has led to reduction in 2015 prices versus budget.
23 Do you see that?

24 A. Yes.

25 Q. So Syngenta is tracking Cheminova's price, correct?

1 A. Syngenta is tracking generic prices. That's what it says.

2 Q. And among the generics it's tracking is Cheminova?

3 A. There's nothing on this page that tells me that Cheminova
4 had a price in the market at that point.

5 Q. But there is something on the page that tells you that
6 Cheminova has led, at least in part, in reduction in 2015
7 prices versus budget, correct?

8 A. No. What it tells me -- the following three bullet points
9 would tell me that branded premium to Willowood generic is X,
10 fighting brand premium to Willowood generic is X. So it tells
11 me that's the primary one that we're monitoring.

12 Q. So the fact that it identifies Cheminova as leading to
13 reduction in 2015 prices versus budget is not accurate?

14 A. What it says is that there is a brand manager --

15 Q. I just want --

16 A. -- putting together a plan that is trying to make sure he
17 doesn't leave something out, but what he knows is Willowood is
18 in the market and they are currently 23 percent under our
19 price.

20 Q. You're the sponsor of this document, Mr. Cecil, so I
21 presume you reviewed it.

22 A. So I would presume that I would know what it says being
23 the sponsor.

24 Q. And it -- I'm just trying to make sure --

25 **THE COURT:** So let him finish his question before you

1 start answering.

2 Then if you'll let him finish his answer before you
3 ask another question so you don't talk over each other.

4 **MR. TILLER:** Okay.

5 **THE COURT:** Go ahead.

6 **BY MR. TILLER:**

7 Q. Let me take you to -- I think we've had a good
8 conversation about that page. Let me take you to 283457. The
9 first -- the title -- would you agree with me that the title of
10 that page is "Row crop fungicides will see first entry of
11 strobiline generics with basic manufacturers moving to SDHI
12 premixes"? Correct?

13 A. Yes.

14 Q. Okay. And SDHI is a new type of fungicide, correct?

15 A. It is.

16 Q. And Solatenol is an SDHI, correct?

17 A. Solatenol is an SDHI.

18 Q. And Solatenol was coming to market in 2016, correct?

19 A. Yes, it was.

20 Q. And the idea, as you talked about when Mr. Coughlin was
21 questioning you, was to transition certain customers to this
22 new type of fungicide called Solatenol, correct?

23 A. Correct.

24 Q. And other competitors also had Solatenol -- also had SDHIs
25 on the market, correct?

16 1 A. Yes.

16 2 Q. And, in fact, BASF had begun offering its SDHI Priaxor by
16 3 2015, correct?

16 4 A. Yes, it had.

16 5 Q. So a new product from BASF had come on line in 2015 that
16 6 was competitive with azoxystrobin, correct?

16 7 A. Yes.

16 8 Q. And here you will see -- first of all, on the right-hand
16 9 side -- the chart on the right-hand side is titled "Competitive
16 10 pressure increases as generics enter and basics move to SDHI
16 11 mixtures," correct?

16 12 A. Correct.

16 13 Q. So there was a competitive pressure coming from basics
16 14 moving to SDHI mixtures, correct?

16 15 A. There was always competitive pressure with BSF, yes.

16 16 Q. But, specifically, because it had an SDHI on the market in
16 17 2015 and Syngenta did not?

16 18 A. Yes.

16 19 Q. Okay. And you noted here, under "BASF," that BASF was
16 20 driving volume to -- I have a hard time with this word --
16 21 Pyraclostrobin prior to the Pyraclostrobin patent falling,
16 22 correct?

16 23 A. That's correct.

16 24 Q. And the Pyraclostrobin patent was expiring in 2015 --
16 25 summer of 2015, correct?

1 A. That's correct.

2 Q. And so, BASF was driving volume to Pyraclostrobin to sell
3 as much as it could before its patent expired, correct?

4 A. Yes.

5 Q. And by driving volume, it was lowering its price, correct?

6 A. Not necessarily.

7 Q. How else was it driving volume?

8 A. They have many tactics, just like every company, to drive
9 volumes.

10 Q. So they were at least trying to increase sales using
11 certain tactics?

12 A. Yeah. We've been competing with BASF for 40 years.
13 They're a very good competitor.

14 Q. But this is something new that was happening in 2015
15 because of the imminent expiration of its patent, correct?

16 A. Yes.

17 Q. Okay. And in the next bullet, BA -- no, no, right there.
18 I'm sorry, Chris -- BASF was also aggressively transitioning
19 its customers to its new SDHI, correct?

20 A. It appears so.

21 Q. Okay. Going down to the bottom on the right-hand side, do
22 you see where it says, "Third Parties and Generics"?

23 A. I do.

24 Q. And there, among others, you note, since you're the
25 sponsor, Willowood USA and Cheminova, correct?

16 1 A. Yes, all of whom had registrations in the market.

16 2 Q. I understand that. Let me show you Defendant 88, please.

16 3 **THE COURT:** What was the number?

16 4 **MR. TILLER:** Eighty-eight. I'm sorry, Your Honor.

16 5 **THE COURT:** That's all right.

16 6 **MR. TILLER:** I'm sorry. I'm throwing Ms. Logan
16 7 curveballs here.

16 8 **THE WITNESS:** Excuse me. Can I get a drink of water?

16 9 **THE COURT:** Yeah, he's asking for some water. Maybe
16 10 somebody can bring him some.

16 11 **MR. TILLER:** Do you have 82? I can go to 82. May I
16 12 approach the witness, Your Honor?

16 13 **THE COURT:** Yes. Which one are you approaching with?

16 14 **MR. TILLER:** I'm sorry. I'm now to 82.

16 15 **THE COURT:** Defendant's --

16 16 **MR. TILLER:** Defendant's 82. I'd move for its
16 17 admission.

16 18 **MR. COUGHLIN:** If I can just look at it briefly, Your
16 19 Honor.

16 20 **MR. TILLER:** Please.

16 21 **THE COURT:** You can go ahead and hand it to the
16 22 witness, so he can be looking at it at the same time.

16 23 **MR. COUGHLIN:** No objection.

16 24 **THE COURT:** It'll be admitted.

16 25 **BY MR. TILLER:**

16 1 Q. If we could look at page 56130, please.

16 2 **THE COURT:** I'm sorry. Say again.

16 3 **MR. TILLER:** 56130. Do you have it, Your Honor?

16 4 **THE COURT:** I'm just going to look on the screen.

16 5 These books are kind of big.

16 6 **BY MR. TILLER:**

16 7 Q. Looking at the second note on the left-hand side, do you
16 8 see where it says "Row Crops"?

16 9 A. I do.

16 10 Q. Will you agree with me that, under "Row Crops," it says,
16 11 decline in intensity due to commodity prices?

16 12 **THE COURT:** I'm sorry. I don't think I know what
16 13 this document is. I'm --

16 14 **MR. TILLER:** It's one of the --

16 15 **THE COURT:** If you could ask the witness.

16 16 **BY MR. TILLER:**

16 17 Q. What is this document?

16 18 A. That's a good question. I think this is a -- it's an
16 19 extract from -- from some strategy plan, but I can't tell you
16 20 which one.

16 21 Q. Okay.

16 22 A. And it's a mismatch of a lot of different stuff, it looks
16 23 like.

16 24 **MR. COUGHLIN:** Are you asking about the specific page
16 25 or --

1 **THE COURT:** Well, I just don't know what it is that
2 he's asking about, so I suspect the jury doesn't know, either.

3 **MR. TILLER:** Could you take it to the second page
4 there, Bonnie, just scroll it down.

5 **BY MR. TILLER:**

6 Q. At least one of the pages of this -- and again, this is
7 how it's produced to us -- says this is from August of 2015.
8 Do you see that on the second page?

9 A. I do.

10 Q. Okay. Do you have any reason to believe that it's not
11 from August of 2015?

12 A. I believe that page is. Like I said, I think this is a
13 mismatch of a lot of different documents, so I can't tell you
14 when the rest is.

15 Q. Okay. If we could go down to -- but you believe it's a
16 strategy plan?

17 A. It's not a strategy plan. It's an extract from some
18 strategy plans. I don't know.

19 Q. Well, let's -- let me ask a couple of questions and then
20 we might go to another one.

21 **MR. TILLER:** Give me just a second, Judge. Prior to
22 that page, Bonnie, there's an e-mail.

23 **BY MR. TILLER:**

24 Q. Do you see the e-mail from Andrew Fisher to Chip Garman?

25 A. Not yet.

1 Q. On page 056129, I believe. Can you show the Bates?
2 056122. Do you see that e-mail?

3 A. No, I don't.

4 Q. 056122.

5 **THE COURT:** You can step up and help him find it.

6 **BY MR. TILLER:**

7 Q. Andrew Fisher is the product lead for azoxystrobin?

8 A. Yes.

9 Q. Who is Chip Garman?

10 A. He's part of our Key Account Management Team.

11 Q. And you see that this is an e-mail from Mr. Fisher to
12 Mr. Garman sending some attachment?

13 A. Yes.

14 Q. I believe that what we're looking at is the attachment to
15 this e-mail.

16 **MR. COUGHLIN:** Objection. I think he needs to
17 establish a foundation of whether this witness knows --

18 **THE COURT:** Well, I mean, you all have admitted to
19 its admission.

20 **MR. TILLER:** Yeah.

21 **THE COURT:** So I assume it's a Syngenta document.

22 **MR. TILLER:** It is a Syngenta document.

23 **THE COURT:** Well --

24 **MR. TILLER:** If I could -- I'm sorry. You're right.

25 **THE COURT:** So counsel can't testify.

16 1 **MR. TILLER:** You're right.

16 2 **THE COURT:** Okay? So it just would be helpful to
16 3 know what it is. I know it's been admitted. Syngenta hasn't
16 4 objected to that. It appears to be Syngenta documents. We can
16 5 all look at it and see that. So, you can ask your questions.

16 6 **MR. TILLER:** Can you please go to 056130.

16 7 **BY MR. TILLER:**

16 8 Q. Do you see under "Row Crops," Mr. Cecil, that it says
16 9 there's a decline in intensity due to commodity prices? Do you
16 10 see that?

16 11 A. I see the statement, yes.

16 12 Q. Commodity prices have been low since 2013, am I correct?

16 13 A. Yes.

16 14 Q. Okay. And commodity prices have an effect on the sales of
16 15 azoxystrobin, correct?

16 16 A. Not necessarily. They can have.

16 17 Q. Can you please close that down. So on the right-hand
16 18 side, under "Macro Environment" at the top, it says C, S, W.
16 19 Would that be corn, soy, and wheat?

16 20 A. Yes, I believe so.

16 21 Q. Corn, soy, and wheat price at 10-year low through 2017.
16 22 Do you see where it says that?

16 23 A. Yes.

16 24 Q. And it further says: Corn, soy, wheat commodity price at
16 25 10-year low through 2017 reduce fungicide market. Is that

16 1 statement accurate?

16 2 A. That is an accurate statement. What I would refresh your
16 3 memory on is, is I talked about azoxystrobin giving you a
16 4 crop-enhancement effect; this says the fungicide market. So
16 5 the use of it as a fungicide would be lower. The use of it as
16 6 a return on investment tool for the customer would be stable.

16 7 Q. There is also a statement in the fourth bullet on that
16 8 side that says that there is strobilurin resistance in the
16 9 rice -- or strobilurin resistance in rice, soy, cereals
16 10 expands. Do you see that statement?

16 11 A. I do.

16 12 Q. So there was -- and "resistance" means the fungi, or the
16 13 disease, is not being -- or is not capable of being treated by
16 14 the strobiluron, correct?

16 15 A. Certain strobiluron fungicides are not effective on that
16 16 disease, that's true. Azoxy is not one of them.

16 17 Q. Azoxy is not one of them?

16 18 A. Not yet.

16 19 Q. This -- this is a document that says that this is an
16 20 azoxystrobin US product marketing plan, but that statement
16 21 doesn't apply to azoxystrobin?

16 22 A. The title on the right is a high-level market trend, so
16 23 it's talking about the overall market, which we participate in,
16 24 not azoxy based.

16 25 Q. Okay.

16 1 **THE COURT:** Is this a good place to stop?

16 2 **MR. TILLER:** Can I just ask one or two more questions
16 3 about this document and then we'll --

16 4 **THE COURT:** All right.

16 5 **BY MR. TILLER:**

16 6 Q. If we could look at 056131. Do you have that page, sir?

17 7 A. Yes.

17 8 Q. This is an Azoxystrobin US Product Marketing Plan

17 9 Competitor Overview, correct?

17 10 A. Yes, it is.

17 11 Q. And under, "Generics," at the bottom, there is mention of

17 12 Azoxy 2SC, which is Willowood's product, correct?

17 13 A. Correct.

17 14 Q. Affiance -- or maybe that's Affiance?

17 15 A. I have no idea.

17 16 Q. Equation. That's Cheminova, correct?

17 17 A. I believe so.

17 18 Q. Azaka. That's also Cheminova, correct?

17 19 A. I believe so.

17 20 **MR. TILLER:** This might be a good time to stop now.

17 21 **THE COURT:** All right. Ladies and gentlemen, we'll
17 22 stop here for the day and come back in the morning. Over the
17 23 evening recess, please remember not to talk to anybody about
17 24 the case. Don't talk to each other as you go back to your
17 25 cars. Continue not to read or listen to any news reports.

1 Don't conduct any independent investigation. No posting, no
2 tweeting. You'll remember all of that.

3 And, of course, keep an open mind as you've started
4 to hear the evidence. Resist any temptation to start forming
5 opinions since you haven't heard all of the evidence. Leave
6 your notes in your chair, and I'll see you tomorrow morning at
7 9:30. We'll hope for better weather.

8 (At 5:01 p.m., jury excused.)

9 **THE COURT:** You may step down. I apologize, I didn't
10 mean to create a problem about that last exhibit. It just --
11 nobody said it was a Syngenta document and --

12 **MR. TILLER:** Oh, okay.

13 **THE COURT:** -- you know, you start in talking about
14 it, and nobody even knows it's a Syngenta document. So that
15 was really all I was trying to do. I didn't mean to cause a
16 problem.

17 The plaintiffs had admit -- you know, had no
18 objection to it, but it doesn't have a lot of context if you
19 don't know what it is or what the date is.

20 **MR. COUGHLIN:** For the Court's assistance, we did
21 produce these documents, but this particular exhibit appears to
22 be a collection of a bunch of different documents or portions
23 of documents. So it was produced in discovery. We're not
24 challenging the authenticity. Whether this particular witness
25 has knowledge about anything particular -- so I wasn't trying

17 1 to argue about it.

17 2 **THE COURT:** Okay. I appreciate you clarifying that.
17 3 It's just, you know, when it comes out of nowhere and we don't
17 4 know what it is --

17 5 **MR. TILLER:** That's fair.

17 6 **THE COURT:** -- it's a little harder to get the
17 7 context. So how much longer do you think you'll be on cross
17 8 with this witness?

17 9 **MR. TILLER:** Forty.

17 10 **THE COURT:** Say again.

17 11 **MR. TILLER:** Forty.

17 12 **THE COURT:** Forty more minutes? All right.

17 13 **MR. TILLER:** Maybe 30.

17 14 **THE COURT:** Okay.

17 15 **MR. TILLER:** And, Your Honor, just for clarification,
17 16 the one document, which I --

17 17 **THE COURT:** Defendant's 68.

17 18 **MR. TILLER:** Defendant's 68, we're just going to
17 19 redact or pull out that one page.

17 20 **THE COURT:** You can pull out the page, or just mark
17 21 it up. Just show it to the plaintiff.

17 22 **MR. TILLER:** Okay.

17 23 **THE COURT:** And, I mean, redact it or pull it out.

17 24 And as long -- you know, you all agree that it doesn't have the
17 25 stuff I said should stay out.

1 **MR. SANTHANAM:** We would prefer for it to be pulled
2 out, Your Honor, rather than redacted.

3 **THE COURT:** Okay. Well, you all can work that out.
4 And once you've got that substitute document, it'll be
5 admitted, and we can take care of that in the morning.

6 What other -- let's see. So we didn't make as much
7 progress this afternoon as the plaintiff predicted. So I guess
8 we're still looking next at -- I've forgotten who you said.

9 **MR. LEVINE:** Mr. Fisher will be next, followed by
10 Mr. Wichert, followed by two deposition -- one dep video, one
11 for which there is no video, we'll have a deposition reading,
12 and then Dr. Wilner.

13 **MR. SANTHANAM:** We may not get to Dr. Wilner.

14 **MR. LEVINE:** We may not, depending upon the length of
15 the cross-examinations of --

16 **THE COURT:** I don't think you can blame the cross. I
17 mean, the direct of Mr. Cecil was very long. So, you know --
18 but, yeah, I appreciate it obviously depends on the length of
19 both the direct and the cross. But I'm just trying to figure
20 things out for the schedule going forward.

21 So my best guess is you're not going to rest your
22 case tomorrow, unless Mr. Fisher and Mr. Wichert are going to
23 be really short.

24 **MR. LEVINE:** Probably a fair assumption, you know,
25 just depending upon -- knowing the length of the directs for

17 1 the witnesses. One of the depositions that will be played is a
17 2 little on the longer side. If so, I think it more likely we'll
17 3 finish with the expert probably Friday.

17 4 **THE COURT:** Okay. Even if we get started with him
17 5 tomorrow, he'd probably finish Friday?

17 6 **MR. LEVINE:** But because, for example, Mr. Heinze's
17 7 redirect covered what they were going to do in their case in
17 8 chief, I think we're going to make up some time as we start
17 9 heading into Friday.

17 10 **THE COURT:** Yeah, okay. Well, I mean, we're -- you
17 11 know, I gave you all a certain amount of time, and you're
17 12 well -- you're still within it, so --

17 13 **MR. TILLER:** We have folks ready for Friday.

17 14 **THE COURT:** All right. Good. Anything else we can
17 15 talk about productively? No? All right. I'll see you all in
17 16 the morning at 9:30.


17 17 (At 5:05 p.m., proceedings concluded.)
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C E R T I F I C A T E

I, J. CALHOUN, RPR, United States District Court
Reporter for the Middle District of North Carolina, DO HEREBY
CERTIFY:

That the foregoing is a true and correct transcript of
the proceedings had in the above-entitled matter.

Date: 9-6-17


J. Calhoun, RPR
United States Court Reporter
324 W. Market Street
Greensboro, NC 27401